MONTANA LEGISLATIVE HISTORY

Chapter 196 19 67

Bill H _____ S 20 Original bill & history ____C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	Feb 20	✓C	Hearing Date(s)	Feb 06	✓C
	Feb 21	✓C		_____	____C
	_____	____C		_____	____C
	_____	____C		_____	____C
Date Out	Feb 21	✓C		Feb 06	✓C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

Senate Bill No. 194 was presented to the committee. Senator Judge, chief author of the bill, appeared before the committee in behalf of his bill. Ross Cannon, Special Assistant in the Attorney General's Office, also appeared before the committee to explain this bill. He informed the committee that the main purpose of the bill is to clarify what the law now states. He said that the advantage of protecting a sealed bid is the advantage of getting a better rate of interest, and that this bill would make it clear to the issuers that they may protect sealed bids if they so desire. Appearing before the committee as opponents to the bill were Jim Snow and Mr. Hodges. Their main objection to the bill was the "may" in the bill which they felt would confuse the issue and would open the door to negotiation. They also felt it would be harmful to the taxpayer if this law were passed.

Senate Bill No. 115 was then taken up by the committee. Senator Dussault informed the members that Senator Shotte and Alex Stephenson appeared before the committee to testify in behalf of this bill, but could not stay until the bill was heard. Senator Turnage made a motion, seconded by Senator Dzivi, that Senate Bill No. 115 do not pass. The motion was carried.

Senate Bill No. 236 was considered by the committee. Senator Rehberg explained this bill to the committee, in the absence of the chief sponsor. After consideration of this bill, Senator Dzivi made a motion, seconded by Senator Turnage, that SEnate Bill No. 236 do not pass. The motion was carried.

Senate Bill No. 175 was then considered by the committee. After consideration, Senator Gilfeather made a motion, seconded by Senator Dzivi, that Senate Bill No. 175 do pass. The motion was carried.

Senator Dussault then discussed Senate Bill No. 20 with the members of the committee. He told the committee that, due to the shortness of time for transferring bills to the House, that the House Judiciary Committee had requested that the Senate Judiciary Committee recommend do pass on this bill and that the amendments could be made in the House. After consideration, Senator Turnage made a motion, seconded by Senator McGowan, that Senate Bill No. 20 do pass. The motion was carried.

Senator Gilfeather made a motion, seconded by Senator McGowan, that Senate Bill No. 176 be let to lie in the committee. The motion was carried.

Senate Bill No. 194 was considered by the committee. After consideration, it was moved by Senator Turnage and seconded by Senator McGowan, that Senate Bill No. 194 do not pass. The motion was carried.

STANDING COMMITTEE REPORT

- [x] DO PASS
- [ ] DO NOT PASS
- [ ] BE CONCURRED IN
- [ ] BE NOT CONCURRED IN
- [ ] BE ADOPTED
- [ ] BE NOT ADOPTED

February 7 19 67

MR. PRESIDENT:

We, your committee on Judiciary

having had under consideration Senate Bill No. 20

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A MONTANA CODE OF CRIMINAL PROCEDURE, TO CODIFY AND GENERALLY REVISE THE STATUTES WHICH GOVERN COURT PROCEDURES IN CRIMINAL MATTERS."

Respectfully report as follows: That Senate Bill No. 20

1961

House

JUDICIARY

SB 20 Judiciary Committee	Creating Montana Code of Criminal Procedure	2-11	2-21	2-22	BE CONCURRED IN	
SB 86 McOmber, Anderson, Edwards et al	Providing that if vacancy occurs in multi-county senatorial or rep. distr., before election, same to be filled by comm. of 32 members from each county	2-11	2-15	2-16	BE CONCURRED IN	SI BY GOV NOR
SB 87 McOmber, Anderson, Edwards, et al	Providing that vacancies in either House shall be filled by Board or bds. of Co. Comm.	2-11	2-15	2-16	BE NOT CONCURRED IN	KILLE BY SENAT
SB 119 Vainio, Flynn, Turnage, Schotte, Tracy	Metropolitan sanitary and/or storm sewer districts	2-10	2-16	2-17	BE CONcurred in	
SB 181 Judiciary Comm.	Amending Sec. 43-107, R.C.M.47 to redefine Congressional districts	2-10	2-16	2-17	BE CONCURRED IN	SIGNI BY GOVE
SB 216 Kafka, by request	requiring info. agents to report to St. Bd.ofEqual. all sums upon which no withholding tax has been deducted	2-10	2-20	2-21	BE CONCURRED IN	
SB 231 Groff, Dussault, Turnage	Relating to bonds of irrigation districts and proceeds of sale thereof	2-10	2-21	2-22	BE CONCURRED IN	

JUDICIARY COMMITTEE

February 20, 1967

The House Judiciary Committee met upon adjournment February 20, 1967, with Chairman Mather presiding. All members were present except Prevost and Sullivan.

SB 151, relating to definition of "injury" under Workmen's Compensation Act, was discussed by Senator Mahoney, chief sponsor.

Also appearing as proponents were:

Lt. Governor Ted James
James S. Umber, Montana State AFL-CIO
J. H. McAlear, Attorney, Red Lodge, Montana, who also introduced Bob Miller of Red Lodge, who had a dispute with the Industrial Accident Board, and Mr. McAlear stated his case would have been compensated before 1961 and should be compensated.
Richard McCreanor, Montana State District Council of Labor and Montana Building & Trades Const.
Reed W. Mathews, State Branch Op. Engrs.
Dr. Bennett, who proposed amendments to the bill
Senator Mackay, who testified as to Bob Miller's case and verified what Mr. McAlear had said

Appearing as an opponent was:

R. L. Brown, The Anaconda Company

SB 162, relating to formal requisites of financing statements, was discussed by Walter Murfitt, representing Montana Land Title Assn. Senator Haughey, chief sponsor, was unable to appear. Also testifying for the bill was F. B. (Fritz) Weed, Montana Land Title Association, who is a realtor in Helena, Montana.

SB 216, requiring information agents to report to State Board of Equalization all sums upon which no withholding tax has been deducted, was discussed by Sen. Kafka, sponsor.

COMMITTEE action was as follows:

SB 184 - moved by Harrison that it BE CONCURRED IN. Motion carried.

SB 216 - moved by Hall that it BE CONCURRED IN. Motion carried.

SB 151 - subcommittee selected by Chairman Mather to consist of: Murphy, ch., Wallander, Hall.

SB 20 - Judge Castles and Professor Elison were here to discuss possible amendments, as was Sen. Hibbs. It was decided that since the Court will be empowered to make amendments, the bill should be passed through the committee (be concurred in) and sent to the House. Accordingly, Murphy made the motion that SB 20 BE CONCURRED IN. Motion carried.

JUDICIARY COMMITTEE

February 21, 1967

The House Judiciary Committee met upon adjournment February 21, 1967, with Chairman Mather presiding. All members were present except McCulloch, Bailey, Prevost and Sullivan.

SB 231 was considered first, and as Senator Groff could not stay, Mr. Murphy explained the bill, which has to do with bonds of irrigation districts.

SB 233 was considered, with chief sponsor, Sen. Keenan, appearing. Representative Stimatz also spoke as a proponent.

SB 113 was heard, with Sen. Dzivi appearing for the Highways & Transportation Committee, as he did also for SB 114. Alex Stephenson appeared very briefly on both bills, and John Fouse spoke and asked that SB 114 be killed because of objections by the regional office of Health, Education & Welfare which said it was not in compliance with the Social Security Act.

SB 243 was considered, with Sen. Dzivi speaking on behalf of Sen. Dussault, chief sponsor.

SB 20 was discussed again, and Sen. Dzivi testified as to certain amendments he, Sen. Hibbs and others would like. It was brought out again, as Judge Castles has stated, that this can be done by the Supreme Court hereafter pursuant to its rule making power. After consideration, committee action was as follows:

SB 20 - Stimatz moved to reconsider this bill. Motion failed. Therefore, it will be reported out pursuant to yesterday's minutes as being concurred in by this committee.

SB 231 - Hall moved that it BE CONCURRED IN. Motion carried.

SB 233 - Harrison proposed an amendment by motion, and motion carried. Harrison moved that SB 233 BE CONCURRED IN, AS AMENDED. Motion carried.

SB 113 - Goan moved that it be amended, and, AS AMENDED, BE CONCURRED IN. Motions carried.

SB 114 - Murphy moved that it BE NOT CONCURRED IN. Motion carried.

SB 243 - Hall moved that it BE CONCURRED IN. Motion carried.

There being no further business, the meeting was adjourned.

W. S. MATHER, CHAIRMAN

by the Montana highway commission where federal aid is obtained from the bureau of public roads or the department of agriculture of the United States; neither shall a successful bidder be required to be licensed as provided herein before the awarding and execution of any contract to be let by the state highway commission where federal aid from the bureau of public roads or the department of agriculture of the United States is involved."

Withholding of percentage of gross receipts.

Section 3. The state, county, city or any agency or department thereof, as described in section 84-3501 (b), for whom the contractor is performing public work, shall withhold, in addition to other amounts withheld as provided by law, one per cent (1%) of all payments due the contractor and shall transmit such moneys to the state board of equalization. In the event that the one per cent (1%) of gross receipts is not withheld as provided, the contractor shall make payment of these amounts to the state board of equalization within thirty (30) days after the date on which the contractor receives each increment of payment for work performed by the contractor. Any overpayment of the one per cent (1%) of gross receipts withheld, or paid by any contractor hereunder, shall be refunded by the state board of equalization at the end of the income year upon written application therefor.

Additional license fee as credit.

Section 4. The additional license fees withheld or otherwise paid as provided herein may be used as a credit on the contractor's corporation license tax provided for in title 84, chapter 15, R.C.M. 1947, or on the contractor's income tax provided for in title 84, chapter 49, R.C.M. 1947, depending upon the type of tax the contractor is required to pay under the laws of the state.

Personal property tax as credit.

Personal property taxes paid in Montana on any personal property of the contractor which is used in the business of the contractor and is located within this state may be credited against the license fees required under this act. However, in computing the tax credit allowed by this act against the contractor's corporation license tax or income tax, the personal property tax credit against the licensee fees herein required shall not be considered as license fees paid for the purpose of such income tax or corporation license tax credit.

Rules and regulations.

Section 5. The state board of equalization shall establish rules and regulations necessary for the effective implementation of the provisions of this act, including, but not limited to, requiring public contractors to file a contractor's return showing public works contracts performed during a calendar year.

Violation of act and penalty.

Section 6. A person failing to file a contractor's license return as provided and required by the state board of equalization, upon conviction, shall be fined not less than one thousand dollars ($1,000) or more than ten thousand dollars ($10,000).

Effective immediately.

Section 7. This act shall be effective upon passage and approval.

Approved: February 28, 1967.

CHAPTER 196

An Act Creating a Montana Code of Criminal Procedure, to Codify and Generally Revise the Statutes Which Govern Court Procedures in Criminal Matters.

Be it enacted by the Legislative Assembly of the State of Montana:

The Montana Code of Criminal Procedure.

Section 1. There is hereby created The Montana Code of Criminal Procedure which is Title 95 of the Revised Codes of Montana, 1947, and provides:

TITLE 95 MONTANA CODE OF CRIMINAL PROCEDURE

PART I. GENERAL PROVISIONS

CHAPTER 1. SCOPE, PURPOSE AND CONSTRUCTION

Scope.

95-101. **Scope.** These provisions shall govern the procedure in the courts of Montana in all criminal proceedings except where provision for a different procedure is specifically provided by law.

Purpose and construction.

95-102. **Purpose and Construction.** These provisions are intended to provide for the just determination of every criminal proceeding. They shall be construed to secure simplicity in procedure, fairness in administration and elimination of unjustifiable expense and delay.

Definitions.

CHAPTER 2. DEFINITIONS

95-201. **Meanings of Words and Phrases.** For the purposes of this code, the words and phrases described in this chapter have the meanings designated in this chapter, except when a particular context clearly requires a different meaning.

95-202. **Singular Term Includes Plural—Gender.** Singular term shall include the plural and the masculine gender shall include the feminine except when a particular context clearly requires a different meaning.

"Charge."

95-203. **Charge.** "Charge" means a written statement presented to a court accusing a person of the commission of an offense and includes complaint, information and indictment.

"Conviction."

95-204. **Conviction.** "Conviction" means a judgment of conviction or sentence entered upon a plea of guilty or upon a verdict or finding of guilty of an offense, rendered by a legally constituted jury or by a Court of competent jurisdiction authorized to try the case without a jury.

"Court."

95-205. **Court.** "Court" means a place where justice is judicially administered and includes a judge thereof.

"Judge."

95-206. **Judge.** "Judge" means a person who is invested by law with the power to perform judicial functions and includes court, justice of the peace or police magistrate when a particular context so requires.

"Judgment."

95-207. **Judgment.** "Judgment" means an adjudication by the court that the defendant is guilty or not guilty and if the adjudication is that the defendant is guilty, it includes the sentence pronounced by the court.

"Magistrate."

95-208. **Magistrate.** "Magistrate" is an officer having power to issue a warrant for the arrest of a person charged with an offense and includes:

(a) The justices of the supreme court.

(b) The judges of the district courts.

(c) Justices of the peace.

(d) Police magistrates in towns or cities.

"Offense."

95-209. **Offense.** "Offense" means a violation of any penal statute of this State or of any ordinance of its political subdivisions.

"Peace officer."

95-210. **Peace Officer.** "Peace officer" means any person who by virtue of his office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses while acting within the scope of his authority.

"Sentence."

95-211. **Sentence.** "Sentence" is the punishment imposed on the defendant by the court.

Jurisdiction.

CHAPTER 3. JURISDICTION

District court.

95-301. **Jurisdiction of the District Court.** The district courts have jurisdiction of all public offenses not otherwise provided for.

Justice court.

95-302. **Jurisdiction of the Justice of the Peace Courts.** The justices' courts have:

(a) Jurisdiction of all misdemeanors punishable by a fine not exceeding $500 or imprisonment not exceeding six months, or both such fine and imprisonment;

(b) Concurrent jurisdiction, with district courts, of all misdemeanors punishable by a fine only, not exceeding $1,500; and

(c) Jurisdiction to act as examining and committing courts and for such purpose to conduct preliminary hearings.

Police court.

95-303. **Jurisdiction of Police and Municipal Courts.**

(a) The police courts have criminal jurisdiction as authorized by sections 11-1602 and 11-1603.

(b) Municipal courts have criminal jurisdiction as authorized by section 11-1702.

State criminal jurisdiction.

95-304. **State Criminal Jurisdiction.**

(a) A person is subject to prosecution in this state for an offense which he commits, while either within or outside the state, by his own conduct or that of another for which he is legally accountable, if:

(1) The offense is committed either wholly or partly within the state; or

(2) The conduct outside the state constitutes an attempt to commit an offense within the state, and an act in furtherance of the offense occurs in the state; or

(3) The conduct within the state constitutes an attempt, solicitation or conspiracy to commit in another jurisdiction an offense under the laws of this state and such other jurisdiction.

(b) An offense is committed partly within this state, if either the conduct which is an element of the offense, or the result which is an element, occurs within the state. In homicide, the "result" is either the physical contact which causes death, or the death itself, and if the body of a homicide victim is found within the state, the death is presumed to have occurred within the state.

(c) An offense which is based on an omission to perform a duty imposed by the law of this state is committed within the state, regardless of the location of the offender at the time of the omission.

(d) This state includes the land and water and the air space above such land and water with respect to which the state has legislative jurisdiction.

Venue.

CHAPTER 4. VENUE

Place of trial.

95-401. **Place of Trial.** In all criminal prosecutions the trial shall be in the county where the offense was committed unless otherwise provided by law. All objections to improper place of trial are waived by a defendant unless made before trial. If an objection is made a hearing shall be held and the venue established before proceeding to trial.

Offense committed in two counties.

95-402. **Where Offense Committed Partly in One and Partly in Another County.** Where two or more acts are requisite to the commission of any offense, the trial may be in any county in which any of such acts occur.

Offense committed near county boundary.

95-403. **Where Offense Committed on or Near County Boundary.** Where an offense is committed on or within one-half mile of the boundary of two or more counties, and it cannot be readily determined in which county the offense was committed, the offender may be tried in any of such counties.

Person in one county commits offense in another county.

95-404. **Where a Person in One County Commits or Aids and Abets the Commission of an Offense in Another County.** Where a person in one county commits, aids, abets or procures the commission of an offense in another county the offender may be tried in either county.

Offense committed in transit.

95-405. **Offenses Committed While in Transit.** If an offense is committed in, on or against any instrument of conveyance passing within this state, and it cannot readily be determined in which county the offense was committed, the offender may be tried in any county through which such instrument of conveyance has passed or in the county where the travel terminates.

Causation and death in different counties.

95-406. **Death and Cause of Death in Different Places.** If cause of death is inflicted in one county and the death ensues in another county, the offender may be tried in either county.

Offense commenced outside state.

95-407. **Offense Commenced Outside the State.** If the commission of an offense commenced outside the state is consummated within this state, the offender shall be tried in the county where the offense was consummated.

Stolen property.

95-408. **Stolen Property.** Where a person obtains property by larceny, robbery, false pretenses or embezzlement, he may be tried in any county in which he exerted control over such property.

Escape from prison.

95-409. **Escape From Prison.** A person who escapes from prison may be tried in any county in the state.

Bigamy.

95-410. **Bigamy.** A person who commits the offense of bigamy may be tried in any county where the bigamous marriage or bigamous cohabitation has occurred.

Kidnaping.

95-411. **Kidnaping.** A person who commits the offense of kidnaping may be tried in any county in which his victim has traveled or has been confined during the course of the offense.

Treason.

95-412. **Treason.** A person who commits the offense of treason may be tried in any county.

Competency of accused.

CHAPTER 5. COMPETENCY OF ACCUSED

Mental disease excluding responsibility.

95-501. **Mental Disease or Defect Excluding Responsibility.**

(a) A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he is unable either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law.

(b) As used in this chapter, the terms "mental disease or defect" does not include an abnormality manifested only by re-repeated criminal or otherwise anti-social conduct.

Evidence of mental disease—admissibility.

95-502. **Evidence of Mental Disease or Defect Admissible When Relevant to Element of the Offense.** Evidence that the defendant suffered from a mental disease or defect is admissible whenever it is relevant to prove that the defendant did or did not have a state of mind which is an element of the offense.

95-503. **Mental Disease or Defect Excluding Responsibility is Affirmative Defense; Requirement of Notice: Form of Verdict and Judgment When Finding of Irresponsibility Is Made.**

Mental disease as affirmative defense.

(a) Mental disease or defect excluding responsibility is an affirmative defense which the defendant must establish by a preponderance of the evidence.

Notice.

(b) (1) Evidence of mental disease or defect excluding responsibility is not admissible unless the defendant, at the time of entering his plea of not guilty or within ten days thereafter or at such later time as the court may, for good cause, permit, files a written notice of his purpose to rely on such defense.

(2) The defendant shall give similar notice when in a trial on the merits, he intends to rely on a mental disease or defect, to prove that he did not have a particular state of mind which is an essential element of the offense charged. Otherwise, except on good cause shown, he shall not introduce in his case in chief, expert testimony in support of that defense.

Judgment.

(c) When the defendant is acquitted on the ground of mental disease or defect excluding responsibility, the verdict and the judgment shall so state.

Mental disease excluding fitness.

95-504. **Mental Disease or Defect Excluding Fitness to Proceed.** No person who as a result of mental disease or defect is unable to understand the proceedings against him or to assist in his own defense, shall be tried, convicted or sentenced for the commission of an offense so long as such incapacity endures.

Psychiatric examination.

95-505. **Psychiatric Examination of Defendant With Respect to Mental Disease or Defect.**

(a) Whenever the defendant has filed a notice of intention to rely on the defense of mental disease or defect excluding responsibility, or there is reason to doubt his fitness to proceed, or reason to believe that mental disease or defect of the defendant will otherwise become an issue in the cause, the court shall appoint at least one qualified psychiatrist or shall request the Superintendent of the Montana state hospital to designate at least one qualified psychiatrist, which designation may be or include himself, to examine and report upon the mental condition of the defendant. The court may order the defendant to be committed to a hospital or other suitable facility for the purpose of the examination for a period of not exceeding sixty days or such longer period as the court determines to be necessary for the purpose and may direct that a qualified psychiatrist retained by the defendant be permitted to witness and participate in the examination.

Method of examination.

(b) In such examination any method may be employed which is accepted by the medical profession for the examination of those alleged to be suffering from mental disease or defect.

Report of examination.

(c) The report of the examination shall include the following:

(1) A description of the nature of the examination; (2) A diagnosis of the mental condition of the defendant; (3) If the defendant suffers from a mental disease or defect, an opinion as to his capacity to understand the proceedings against him and to assist in his own defense; (4) When a notice of intention to rely on the defense of irresponsibility has been filed, an opinion as to the ability of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law at the time of the criminal conduct charged; and (5) When directed by the court, an opinion as to the capacity of the defendant to have a particular state of mind which is an element of the offense charged.

Non-participation by defendant.

If the examination cannot be conducted by reason of the unwillingness of the defendant to participate therein, the report shall so state and shall include, if possible, an opinion as to whether such unwillingness of the defendant was the result of mental disease or defect.

Filing of report.

The report of the examination shall be filed (in triplicate) with the clerk of court, who shall cause copies to be delivered to the county attorney and to counsel for the defendant.

95-506. **Determination of Fitness to Proceed; Effect of Finding of Unfitness; Proceedings if Fitness Is Regained.**

Determination of fitness to proceed.

(a) When the defendant's fitness to proceed is drawn in question, the issue shall be determined by the court. If neither the county attorney nor counsel for the defendant contests the finding of the report filed pursuant to section 95-505, the court may make the determination on the basis of such report. If the finding is contested, the court shall hold a hearing on the issue. If the report is received in evidence upon such hearing, the parties shall have the right to summon and cross-examine the psychiatrists who joined in the report and to offer evidence upon the issue.

Determination of unfitness.

(b) If the court determines that the defendant lacks fitness to proceed, the proceeding against him shall be suspended, except as provided in subsection (c) of this section, and the court shall commit him to the custody of the superintendent of the Montana state hospital, to be placed in an appropriate institution of the state department of public institutions for so long as such unfitness shall endure. When the court, on its own motion or upon the application of the superintendent of the Montana state hospital, or the county attorney, or the defendant or his legal representative, determines, after a hearing if a hearing is requested, that the defendant has regained fitness to proceed, the proceeding shall be resumed. If, however, the court is of the view that so much time has elapsed since the commitment of the defendant that it would be unjust to resume the criminal proceedings, the court may dismiss the charge and may order the defendant to be discharged, or, subject to the law governing the civil commitment of persons suffering from mental disease or defect, order the defendant to be committed to an appropriate institution of the state department of public institutions.

Fitness regained.

(c) The fact that the defendant is unfit to proceed does not preclude any legal objection to the prosecution which is susceptible to fair determination prior to trial and without the personal participation of the defendant.

95-507. **Determination of Irresponsibility on Basis of Report; Access to Defendant by Psychiatrist of His Own Choice; Form of Expert Testimony When Issue of Responsibility is Tried.**

Determination of irresponsibility.

(a) If the report filed pursuant to section 95-505 finds that the defendant at the time of the criminal conduct charged suffered from a mental disease or defect which rendered him unable to appreciate the criminality of his conduct or to conform his conduct to the requirements of law, and the court, after a hearing if a hearing is requested by the attorney prosecuting or the defendant, is satisfied that such mental disease or defect was sufficient to exclude responsibility, the court on motion of the defendant shall enter judgment of acquittal on the ground of mental disease or defect excluding responsibility.

Psychiatrist of defendant's choice.

(b) When either the defendant or the state wishes the defendant to be examined by a qualified psychiatrist or other expert, selected by the one proposing the examination, such examiner shall be permitted to have reasonable access to the defendant for the purpose of such examination.

(c) Upon the trial, any psychiatrist who reported pursuant to section 95-505 may be called as a witness by the prosecution or by the defense. If the issue is being tried before a jury, the jury shall not be informed that the psychiatrist was designated by the court or by the superintendent of the Montana state hospital. Both the prosecution and the defense may summon any other qualified psychiatrist or other expert to testify, but no one who has not examined the defendant shall be competent to testify to an expert opinion with respect to the mental condition or responsibility of the defendant, as distinguished from the validity of the procedure followed by, or the general scientific propositions stated by another witness.

Form of expert testimony.

(d) When a psychiatrist or other expert who has examined the defendant testifies concerning his mental condition, he shall be permitted to make a statement as to the nature of his examination, his diagnosis of the mental condition of the defendant at the time of the commission of the offense charged and his opinion as to the ability of the defendant to appreciate the criminality

of his conduct or to conform his conduct to the requirements of law or to have a particular state of mind which is an element of the offense charged. He shall be permitted to make any explanation reasonably serving to clarify his diagnosis and opinion and may be cross-examined as to any matter bearing on his competency or credibility or the validity of his diagnosis or opinion.

95-508. **Legal Effect of Acquittal on the Ground of Mental Disease or Defect Excluding Responsibility; Commitment; Release or Discharge.**

Legal effect of acquittal on ground of mental disease—commitment.

(a) When a defendant is acquitted on the ground of mental disease or defect excluding responsibility, the court shall order him to be committed to the custody of the superintendent of the Montana state hospital to be placed in an appropriate institution for custody, care and treatment.

Release or discharge.

(b) If the superintendent of the Montana state hospital believes that a person committed to his custody, pursuant to paragraph (a) of this section, may be discharged or released on condition without danger to himself or others, he shall make application for the discharge or release of such person in a report to the court by which such person was committed and shall transmit a copy of such application and report to the county attorney of the county from which the defendant was committed. The court shall thereupon appoint at least two qualified psychiatrists to examine such person and to report within sixty days, or such longer period as the court determines to be necessary for the purpose, their opinion as to his mental condition. To facilitate such examinations and the proceedings thereon, the court may cause such person to be confined in any institution located near the place where the court sits, which may hereafter be designated by the superintendent of the Montana state hospital as suitable for the temporary detention of irresponsible persons.

(c) If the court is satisfied by the report filed pursuant to subdivision (b) of this section, and such testimony of the reporting psychiatrists as the court deems necessary that the committed person may be discharged or released on condition without danger to himself or others, the court shall order his discharge or his release on such conditions as the court determines to be necessary. If the court is not so satisfied, it shall promptly order a hearing to determine whether such person may safely be discharged or released. Any such hearing shall be deemed a civil proceeding and the burden shall be upon the committed person to prove that he may safely be discharged or released. According to the determination of the court upon the hearing, the committed person shall thereupon be discharged or released on such conditions as the court determines to be necessary, or shall be recommitted to the custody of the superintendent of the Montana state hospital, subject to discharge or release only in accordance with the procedure prescribed above for a first hearing.

Recommitment.

(d) If, within five years after the conditional release of a committed person, the court shall determine, after hearing evidence, that the conditions of release have not been fulfilled and that for the safety of such person or for the safety of others his conditional release should be revoked, the court shall forthwith order him to be recommitted to the superintendent of the Montana state hospital, subject to discharge or release only in accordance with the procedure prescribed above for a first hearing.

Application for release.

(e) A committed person may make application for his discharge or release to the court by which he was committed, and the procedure to be followed upon such application shall be the same as that prescribed above in the case of an application by the superintendent of the Montana state hospital. However, no such application by a committed person need be considered until he has been confined for a period of not less than six months from the date of the order of commitment, and if the determination of the court be adverse to the application, such person shall not be permitted to file a further application until one year has elapsed from the date of any preceding hearing on an application for his release or discharge.

Statements for treatment inadmissible except on issue of mental condition.

95-509. **Statements for Purposes of Examination or Treatment Inadmissible Except on Issue of Mental Condition.** A statement made by a person subjected to psychiatric examination or treatment pursuant to sections 95-505, 95-506, 95-508 for the purposes of such examination or treatment shall not be admissible in evidence against him in any criminal proceeding on any issue other than that of his mental condition but it shall be admissible upon that issue, whether or not it would be otherwise

deemed a privileged communication unless such statement constitutes an admission of guilt of the crime charged.

Arrest.

CHAPTER 6. ARREST

95-601. **Definitions.**

Arrest defined.

(a) **Arrest Defined.** An arrest is taking a person into custody in the manner authorized by law.

Warrant of arrest.

(b) **Warrant of Arrest:** A Warrant of Arrest is a written order from a court directed to a peace officer, or to some other person specifically named, commanding him to arrest a person. This term includes the original warrant of arrest or a copy certified by the issuing court.

Summons.

(c) **Summons:** A summons is a written order issued by the court which commands a person to appear before a court at a stated time and place.

Notice to appear.

(d) **Notice to Appear:** A Notice to Appear is a written direction issued by a peace officer that a person appear before a court at a stated time and place to answer an offense set forth therein.

Method of arrest.

95-602. **Method of Arrest.**

(a) An arrest is made by an actual restraint of the person to be arrested, or by his submission to the custody of the person making the arrest.

(b) All necessary and reasonable force may be used in making an arrest, but the person arrested shall not be subject to any greater restraint than is necessary to hold or detain him.

(c) All necessary and reasonable force may be used to effect an entry into any building or property or part thereof to make an authorized arrest.

Issuance and service of arrest warrant upon complaint—form of complaint.

95-603. **Issuance and Service of Arrest Warrant Upon Complaint.**

(a) A complaint, as the basis of an arrest warrant, shall be in writing.

(b) When a complaint is presented to a court charging a person with the commission of an offense, the court shall examine upon oath the complainant and may also examine any witnesses.

(c) If it appears from the contents of the complaint and the examination of the complainant and other witnesses, if any, that there is probably cause to believe that the person against whom the complaint was made has committed an offense a warrant shall be issued by the court for the arrest of the person complained against. In the discretion of the court or upon the request of the county attorney, a summons instead of a warrant shall issue. More than one warrant or summons may issue on the same complaint.

(d) A warrant of arrest shall: Warrant of arrest—form.

(1) Be in writing in the name of the State of Montana or in the name of a municipality if a violation of a municipal ordinance is charged;

(2) Set forth the nature of the offense;

(3) Command that the person against whom the complaint was made be arrested and brought before the court issuing the warrant, or if he is absent or unable to act before the nearest or most accessible court in the same county. If an arrest is made in a county other than the one in which the warrant was issued the arrested person shall be taken without unnecessary delay before the nearest and most accessible judge in the county where the arrest was made.

(4) Specify the name of the person to be arrested or if his name is unknown, shall designate such person by any name or description by which he can be identified with reasonable certainty;

(5) State the date when issued and the municipality or county where issued, and

(6) Be signed by the judge of the court with the title of his office.

(e) The warrant of arrest may specify the amount of bail. Amount of bail.

(f) The warrant shall be directed to all peace officers in the state. It shall be executed by a peace officer and may be executed in any county of the state. However, warrants issued for the violation of city ordinances cannot be executed outside the city limits, except as otherwise provided by sections 11-927 and 11-960. Execution of warrants.

Arrest with a warrant.

95-604. **Arrest With a Warrant.** When making an arrest by virtue of a warrant, the peace officer making the arrest shall inform the person to be arrested of his authority, of the intention to arrest him, of the cause of the arrest, and of the fact that a warrant has been issued for his arrest, except when he flees or forcibly resists before the officer making the arrest has an opportunity so to inform him, or when the giving of such information will imperil the arrest. The peace officer making the arrest need not have the warrant in his possession at the time of the arrest, but after the arrest, if the person arrested so requests, the warrant shall be shown to him as soon as practicable.

Procedure when warrant defective.

95-605. **Procedure When Warrant Defective.** No warrant of arrest shall be dismissed nor shall any person in custody for an offense be discharged from such custody because of technical irregularities not affecting the substantial rights of the accused.

Arrest without a warrant.

95-606. **Arrest Without a Warrant.** A peace officer or person making an arrest without a warrant must inform the person to be arrested of his authority, if any, of the intention to arrest him and the cause of the arrest, except when the person to be arrested is actually engaged in the commission of or in an attempt to commit an offense, or is pursued immediately after its commission, or after an escape, or when the giving of such information will imperil the arrest.

Time of making arrest.

95-607. **Time of Making Arrest.** An arrest may be made on any day and at any time of the day or night except that a person cannot be arrested in his home or private dwelling place, at night, for a misdemeanor committed at some other time and place unless upon the direction of a magistrate endorsed upon a warrant of arrest.

Arrest by a peace officer.

95-608. **Arrest by a Peace Officer.** A peace officer may arrest a person when:

(a) He has a warrant commanding that such person be arrested, or

(b) He believes, on reasonable grounds, that a warrant for the person's arrest has been issued in this state, or

(c) He believes, on reasonable grounds, that a felony warrant for the person's arrest has been issued in another jurisdiction, or

(d) He believes, on reasonable grounds, that the person is committing or has committed an offense.

Assisting a peace officer.

95-609. **Assisting a Peace Officer.**

(a) A peace officer making a lawful arrest may command the aid of male persons over the age of eighteen.

(b) A person commanded to aid a peace officer shall have the same authority to arrest as that officer.

(c) A person commanded to aid a peace officer in making an arrest shall not be civilly liable for any reasonable conduct in aid of the officer.

Release by officer of person arrested.

95-610. **Release by Officer of Person Arrested.** A peace officer having custody of a person arrested without a warrant is authorized to release the person without requiring him to appear before a court when the officer is satisfied that there are no grounds for criminal complaint against the person arrested.

Arrest by a private person.

95-611. **Arrest by a Private Person.** A private person may arrest another when:

(a) He believes, on reasonable grounds, that an offense is being committed or attempted in his presence; or

(b) When a felony has in fact been committed and he believes, on reasonable grounds, that the person arrested has committed it.

When summons may be issued.

95-612. **When Summons May Be Issued.**

(a) When authorized to issue a warrant of arrest a court may in lieu thereof issue a summons.

(b) The summons shall:

(1) Be in writing in the name of the State of Montana;

(2) State the name of the person summoned and his address, if known;

(3) Set forth the nature of the offense;

(4) State the date when issued, and the municipality or county where issued;

(5) Be signed by the judge of the court with the title of his office; and

(6) Command the person to appear before a court at a certain time and place.

(c) The summons may be personally served in the same manner as the summons in a civil action.

Effect of not answering summons.

95-613. **Effect of Not Answering Summons.** Upon failure of the person summoned to appear, the magistrate shall issue a warrant of arrest. If after issuing a summons the magistrate becomes satisfied that the person summoned will not appear as commanded by the summons he may at once issue a warrant of arrest.

Notice to appear.

95-614. **Notice to Appear.**

(a) Whenever a peace officer is authorized to arrest a person without a warrant, he may instead issue to such person a notice to appear.

(b) The notice shall:

(1) Be in writing;

(2) State the name of the person and his address, if known;

(3) Set forth the nature of the offense;

(4) Be signed by the officer issuing the notice; and

(5) Direct the person to appear before a court at a certain time and place.

(c) Upon failure of the person to appear, a summons or warrant of arrest may issue.

Offenses committed by corporations.

95-615. **Offenses Committed by Corporations.**

(a) Upon a charge filed against a corporation for the commission of an offense the court shall issue a summons setting forth the nature of the offense and commanding the corporation to appear before the court at a certain time and place.

(b) The summons for the appearance of a corporation may be served in the manner provided for service of summons upon a corporation in a civil action.

(c) If, after being summoned, the corporation does not appear, a plea of not guilty shall be entered by the court having jurisdiction to try the offense for which the summons was issued, and such court shall proceed to trial and judgment without further process.

Persons exempt from arrest.

95-616. **Persons Exempt From Arrest.**

(a) Electors shall, in all cases except treason, felony or breach of the peace, be privileged from arrest during their attendance at election, and in going to and returning from the same.

(b) Senators and representatives shall, in all cases, except felony or breach of the peace, be privileged from arrest during the sessions of the state legislature, and in going to and returning from the same.

(c) The militia shall in all cases, except treason, felony or breach of the peace, be privileged from arrest during their attendance at musters and election, and in going to and returning from the same.

(d) Judges, attorneys, clerks, sheriffs, and other court officers shall be privileged from arrest while attending court and while going to and returning from court.

Magistrate may order arrest.

95-617. **Magistrate May Order Arrest.** A magistrate may orally order a peace officer or private person to arrest any one committing or attempting to commit a public offense in the presence of such magistrate.

Road blocks. "Temporary road block."

95-618. **Road Blocks.**

(a) **Definition.** For the purpose of this act, a "temporary roadblock" means any structure, device, or means used by the duly elected or appointed law-enforcement officers of this state, and their deputies, for the purpose of controlling all traffic through a point on the highway whereby all vehicles may be slowed or stopped.

Authority.

(b) **Authority to establish roadblocks.** The duly elected or appointed law-enforcement officers of this state, and their deputies, are hereby authorized to establish, in their respective jurisdictions, or in other jurisdictions within the state, temporary roadblocks on the highways of this state for the purpose of identifying drivers, and apprehending persons wanted for violation of the laws of this state, or of any other state, or of the United States, who are using the highways of this state.

Minimum requirements.

(c) **Minimum requirements.** For the purpose of warning and protecting the traveling public, the minimum requirements to be met by such officers establishing temporary roadblocks, if time and circumstances allow, are:

1. The temporary roadblock must be established at a point on the highway clearly visible at a distance of not less than one hundred (100) yards, in either direction.

2. At the point of the temporary roadblock, a sign shall be placed on the center line of the highway displaying the word "stop" in letters of sufficient size and luminosity to be readable at a distance of not less than fifty (50) yards, in both directions, either in daytime or darkness.

3. At the same point of the temporary roadblock, at least one red light, which shall be a flashing or intermittent beam of light, must be placed at the side of the roadway clearly visible to the oncoming traffic, at a distance of not less than one hundred (100) yards.

4. At a distance of not less than two hundred (200) yards from the point of the temporary roadblock, warning signs must be placed at the side of the highway, containing any wording of sufficient size and luminosity, to warn the oncoming traffic that a "police stop" lies ahead. A burning beam light, flare, or a lantern must be placed near such signs for the purpose of attracting the attention of approaching drivers during hours of darkness. A red flag may be used for the same purpose during daylight hours.

Existing law preserved.

(d) **Existing law preserved.** Nothing in this act shall be deemed to limit, or encroach upon the existing authority of Montana law-enforcement officers in the performance of their duties involving traffic control.

Penalty.

(e) **Penalty.** Any person who shall proceed or travel through a roadblock without subjecting himself to the traffic control so established shall be guilty of a misdemeanor, and shall be punished by a fine of not more than five hundred dollars ($500.00), or by imprisonment in the county jail for not more than six (6) months, or by both fine and imprisonment.

Close pursuit—arrest by officers of another state.

95-619. **Close Pursuit—Power of Arrest by Officers of Another State.**

(a) Any peace officer of another state of the United States, who enters this state in close pursuit and continues within this state in such close pursuit of a person in order to arrest him, shall have the same authority to

arrest and hold in custody such person, as peace officers of this state have to arrest and hold in custody a person on the ground that he has committed a crime in this state.

Hearing.

(b) **Hearing as to Locality of Arrest.** If an arrest is made in this state by an officer of another state in accordance with the provisions of section 95-619(a), he shall, without unnecessary delay, take the person arrested before a judge of a court of record who shall conduct a hearing for the sole purpose of determining if the arrest was in accordance with the provisions of section 95-619(a) and not of determining the guilt or innocence of the arrested person. If the judge determines that the arrest was in accordance with such provisions, he shall commit the person arrested to the custody of the officer making the arrest, who shall without unnecessary delay take him to the state from which he fled. If the judge determines that the arrest was unlawful, he shall discharge the person arrested.

(c) **Construction of Act.** Section 95-619(a) shall not be construed so as to make unlawful any arrest in this state which would otherwise be lawful.

"State."

(d) **"State" defined.** For the purpose of this act the word state shall include the District of Columbia.

(e) **Certification of Act.** Upon the passage and approval by the governor of this act, it shall be the duty of the secretary of the state (or other officer) to certify a copy of this act to the executive department of each of the states of the United States.

Uniform act on close pursuit.

(f) **Act, how cited.** This act may be cited as the Uniform Act on Close Pursuit.

CHAPTER 7. SEARCH AND SEIZURE

Search and seizure. When authorized.

95-701. **Searches and Seizures—When Authorized.** A search of a person, object or place may be made and instruments, articles or things may be seized in accordance with the provisions of this chapter when the search is made:

(a) As an incident to a lawful arrest.

(b) With the consent of the accused or of any other person who is lawfully in possession of the object or place to be searched, or who is believed upon reasonable

cause to be in such lawful possession by the person making the search.

(c) By the authority of a valid search warrant.

(d) Under the authority and within the scope of a right of lawful inspection granted by law.

Scope of search without warrant.

95-702. **Scope of Search Without Warrant.** When a lawful arrest is effected a peace officer may reasonably search the person arrested and the area within such person's immediate presence for the purpose of:

(a) Protecting the officer from attack, or

(b) Preventing the person from escaping, or

(c) Discovering and seizing the fruits of the crime, or

(d) Discovering and seizing any persons, instruments, articles or things which may have been used in the commission of, or which may constitute evidence of, the offense.

Search warrant defined.

95-703. **Search Warrant Defined.** A search warrant is an order in writing, in the name of the state, signed by a judge, particularly describing the thing or place to be searched and the instruments, articles or things to be seized, directed to a peace officer, commanding him to search for personal property and bring it before the judge.

Grounds for search warrant.

95-704. **Grounds for Search Warrant.** Any judge may issue a search warrant upon the written application of any person that an offense has been committed, made under oath or affirmation before him which:

(a) States facts sufficient to show probable cause for issuance of the warrant.

(b) Particularly describes the place or things to be searched, and

(c) Particularly describes the things to be seized.

Scope of search with warrant.

95-705. **Scope of Search With Warrant.** A search warrant may authorize the seizure of the following:

(a) Contraband,

(b) Any instruments, articles or things which are the fruits of, have been used in the commission of, or which may constitute evidence of, any offense,

(c) Any person who has been kidnapped in violation of the laws of this state, or who has been kidnapped in another jurisdiction and is now concealed within this state.

Filing of application.

95-706. **Filing of Application.** The application on which the warrant is issued shall be retained by the judge but need not be filed with the clerk of the court nor with the court if there is no clerk, until the warrant has been executed or has been returned "not executed".

By whom served.

95-707. **By Whom Served.** A search warrant may in all cases be served by any of the officers mentioned in its direction, but by no other person except in aid of the officer on his requiring it, he being present and acting in its execution.

Service and execution of search warrants.

95-708. **Service and Execution of Search Warrants.** Service of a search warrant is made by exhibiting the original warrant at the place to be searched. If the warrant is executed, a duplicate copy, and a receipt for all articles taken shall be left with any person from whom any instruments, articles or things are seized, or, if no person is available, the copy and receipt shall be left at the place from which the instruments, articles or things were seized. Failure to give or leave such a receipt shall not render the evidence inadmissible in a trial.

Use of force in execution of search warrant.

95-709. **Use of Force in Execution of Search Warrant.** All necessary and reasonable force may be used to execute a search warrant or to effect an entry into any building or property or part thereof to execute a search warrant.

Detention and search of persons on premises.

95-710. **Detention and Search of Persons on Premises.** In the execution of the warrant the person executing the same may reasonably detain and search any person in the place at the time:

(a) To protect himself from attack, or

(b) To prevent the disposal or concealment of any instruments, articles or things particularly described in the warrant.

When warrant may be executed.

95-711. **When Warrant May Be Executed.** The warrant may be executed at any time of any day or night. The warrant shall be executed within ten days from the time of issuance. Any warrant not executed within

such time shall be void and shall be returned to the court or the judge issuing the same as "not executed".

Return to court of things seized under search warrant.

95-712. **Return to Court of Things Seized Under Search Warrant.** The return of the warrant and all instruments, articles and things seized shall be made promptly before the judge who issued the warrant, or if he is absent or unavailable, before the nearest available judge and shall be accompanied by a written inventory of any property taken, verified by the person executing the warrant. The judge shall, upon request, deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

Custody and disposition of things seized under search warrant.

95-713. **Custody and Disposition of Things Seized Under Search Warrant.** The judge before whom the instruments, articles or things are returned shall enter an order providing for their custody or appropriate disposition pending further proceedings.

Custody and disposition of things seized without search warrant.

95-714. **Custody and Disposition of Things Seized Without Search Warrant.** Any peace officer seizing any instruments, articles or things must give a receipt to the person from whose possession they are taken, but failure to give such a receipt shall not render the evidence seized inadmissible upon a trial.

If an arrest has been made all instruments, articles or things seized on a search without warrant shall be delivered to the judge before whom the person arrested is taken, and thereafter handled and disposed of in accordance with Sections 95-712, 95-713 and 95-715. If the person arrested is released without a charge being preferred against him, all instruments, articles or things seized from him, other than contraband, shall be returned to him upon release.

If no arrest has been made such instruments, articles or things may be retained in the custody of the officer making the seizure for a time sufficient for investigation of the supposed crime, after which they must be delivered to the proper judge for disposition in accordance with sections 95-712, 95-713 and 95-715, or returned to the person from whom they were taken.

Return of property seized.

95-715. **Return of Property Seized.** Any person claiming the right to possession of property seized as evidence

may apply to the judge to whom it has been delivered for its return. The judge shall give such notice as he deems adequate to the county attorney and all persons who have or may have an interest in the property and shall hold a hearing to hear all claims to its true ownership. If the right to possession is proved to the judge's satisfaction, he shall order the property, other than contraband, returned if:

(a) The property is not needed as evidence or, if needed, satisfactory arrangements can be made for its return for subsequent use as evidence, or

(b) All proceedings in which it might be required have been completed.

Disposition of unclaimed property.

95-716. **Disposition of Unclaimed Property.** If property seized as evidence is not claimed within six (6) months of completion of the case for which it was seized, and if, after proper inquiry, the judge cannot ascertain or locate any person entitled to its possession, he must order the property to be sold by the sheriff. The proceeds from such sale, after deduction of the costs of storage and preservation of the property, must be paid into the county treasury.

When search and seizure not legal.

95-717. **When Search and Seizure Not Illegal.** No search and seizure, whether with or without warrant, shall be held to be illegal as to a defendant if:

(a) The defendant has disclaimed any right to, or interest in the place or object searched or the instruments, articles or things seized, or

(b) No right of the defendant has been infringed by the search and seizure, or

(c) Any irregularities in the proceedings do not affect the substantial rights of the accused.

Admissibility in other proceedings.

95-718. **Admissibility in other proceedings.** Instruments, articles or things lawfully seized are admissible as evidence upon any prosecution or proceeding whether or not the prosecution or proceeding is for the offense in connection with which the search was originally made.

CHAPTER 8. THE OFFICE OF THE CORONER

Office of the coroner.

95-801. **The office of the coroner.** When a coroner is informed that a death or stillbirth was caused by other

than natural causes or that a death or stillbirth has occurred under circumstances such as to afford a reasonable ground to suspect that the death is the result of criminal conduct, or when no physician or surgeon, licensed in the state of Montana, will sign a death certificate, the coroner shall make an investigation thereof. It shall be the duty of every person acquiring knowledge of such death to report the same forthwith to the coroner of the county in which death apparently occurred. In cases where criminal conduct is suspected, the coroner shall notify one or more law enforcement agencies having jurisdiction. The law enforcement agencies so notified shall have the responsibility to investigate the case.

When coroner to have autopsy.

95-802. **Coroner to have autopsy—when.** If in the opinion of the coroner an autopsy is advisable, he shall order one and shall retain a physician or pathologist to perform it. A full record of the facts found shall be made on a form provided by The Montana State Board of Health in duplicate, the coroner retaining one copy and delivering the other to the county attorney. The right to conduct an autopsy shall include the right to retain such specimens as the physician or pathologist performing the autopsy deems necessary. Performance of autopsies is within the discretion of the coroner except that the county attorney or attorney general may require one. In ordering an autopsy the coroner shall order the body to be exhumed if it has been interred.

When coroner to hold inquest.

95-803. **Coroner to hold inquest—when.** An inquest is a formal inquiry into the causes of and circumstances surrounding the death of any person. The coroner shall hold an inquest only if requested to do so by the county attorney of the county in which death occurred or by the county attorney of the county in which the acts or events causing death occurred. The coroner shall conduct the inquest with the aid and assistance of the county attorney. For holding such inquest, the coroner must summon a jury of not more than nine (9) persons, qualified by law to serve as jurors. Such inquest is to be held in accordance with sections 95-804 through 95-809 of this chapter.

Jurors to be sworn.

95-804. **Jurors to be sworn.** When six or more of the jurors attend, they must be sworn by the coroner to inquire who the person was, and when, where, and by what means he came to his death, and into the circumstances

attending his death; and to render a true verdict thereon, according to the evidence offered to them, or arising from the inspection of the body.

Witnesses to be subpoenaed.

95-805. **Witnesses to be subpoenaed.** A coroner may issue subpoenas for witnesses, returnable forthwith; or at such time and place as he may appoint, which may be served by any competent person. He must summon and examine as witnesses every person who, in his opinion, or that of the jury, has any knowledge of the facts, and may summon a surgeon or physician to inspect the body, and give a professional opinion as to the cause of the death.

Witnesses compelled to attend.

95-806. **Witness compelled to attend.** A witness served with a subpoena may be compelled to attend and testify, or be punished as upon a subpoena issued by a justice of the peace.

Verdict of jury.

95-807. **Verdict of jury in writing, what to contain.** After inspecting the body and hearing the testimony, the jury must render its verdict which shall be by majority vote, and certify the same in writing, signed by them and setting forth who the deceased person is, and when, where, and by what means he came to his death; and if he was killed, or his death occasioned by the act of another by criminal means, who committed the act.

Testimony.

95-808. **Testimony in writing and where filed.** The testimony of the witnesses examined before the coroner's jury must be reduced to writing by the coroner, or under his direction, and forthwith filed by him, with the inquisition, in the office of the clerk of the district court of the county. The coroner must order the inquest proceedings recorded and transcribed by a qualified stenographer and such recording and transcribing expenses shall be paid by the county upon claims duly rendered and certified to by the coroner in the same manner as other claims against the county are paid.

Inquest shall be public.

95-809. **Inquest shall be public.** If an inquest is held the proceedings shall be public.

Property found on body—to whom delivered.

95-810. **Property found on body—to whom delivered.** Any property found with or upon the person of the deceased which is not needed as evidence shall be turned over by the county coroner to the public administrator, to be held until disposed of according to law. Any property needed as evidence shall be turned over to the appropriate investigative authority.

Register.

95-811. **Must keep register.** The county coroner shall keep an official register, in which he must enter the date of holding all inquests, the cause and circumstances of death, if known, and the name of the deceased, when known, and when not, such description of the deceased as may be sufficient for identification.

Jurisdiction of coroner.

95-812. **Jurisdiction of coroner.** When death occurs as a direct result of acts or events which occurred in another county, the coroner of either county shall have jurisdiction. If a conflict of jurisdiction should arise, or should said coroners fail to act, the coroner of the county where the death occurred shall have the primary jurisdiction.

Liability of mortuary or physician.

95-813. **Liability of a mortuary or physician.** No person or firm owning a mortuary, or any person employed in such a mortuary, shall be liable for the acts of the coroner performed in the removal of any body to a mortuary or during the course of an autopsy on such body. No criminal or civil action shall arise against a licensed physician for performing an autopsy authorized by this act.

Coroner shall have needed assistance.

95-814. **The coroner shall have needed assistance.** The county commissioners are authorized to provide and pay for such laboratory facilities, and other technical and clerical assistance as may be required by the county coroner. The coroner, with the approval of the county commissioners, may appoint one or more deputy coroners.

CHAPTER 9.

INITIAL APPEARANCE OF ARRESTED PERSON

Initial appearance of arrested person.

Duty of person who has made arrest.

95-901. **Duty of person who has made an arrest.**

(a) Any person making an arrest under a warrant shall take the arrested person without unnecessary delay before the judge issuing the warrant, or if he is absent or unable to act, before the nearest or most accessible judge of the same county. If an arrest is made in a county other than the one in which the warrant was issued the arrested person shall be taken without unnecessary delay before the nearest and most accessible judge in the county where the arrest was made.

(b) Any person making an arrest without a warrant shall take the arrested person without unnecessary delay before the nearest or most accessible judge in the same

county and a complaint, stating the charges against the arrested person, shall be filed forthwith.

Duty of the court.

95-902. **Duty of the court.** The judge shall inform the defendant:

(a) Of the charge against him;

(b) Of his right to counsel;

(c) Of his right to have counsel assigned by a court of record, in accordance with the provisions of section 95-1001;

(d) That he is not required to make a statement and that any statement made by him may be offered in evidence at his trial;

(e) Admit the defendant to bail in accordance with the provisions of this code.

After the initial appearance a justice of the peace court shall, within a reasonable time, hold a preliminary examination unless the defendant waives a preliminary examination or the district court has granted leave to file an information or an indictment has been returned, or the case is triable in justice court.

CHAPTER 10. RIGHT TO COUNSEL

Right to counsel.

95-1001. **Right to counsel.** Every defendant brought before the court must be informed by the court that it is his right to have counsel before proceeding and must be asked if he desires the aid of counsel. The defendant, if charged with a felony, must be advised that counsel will be furnished at state expense if he is unable to employ counsel. If the offense charged is a felony and if the defendant desires counsel and is unable to employ counsel a court of record must assign counsel to defend him. If the offense charged is a misdemeanor and if the defendant desires counsel and is unable to employ counsel a court of record, in the interest of justice, may assign counsel to defend him.

Waiver of counsel.

95-1002. **Waiver of counsel.** A defendant may waive his right to counsel except that in all felony cases where the defendant is under 18 years of age the defendant shall be represented by counsel at every stage of the proceedings.

Duration of appointment.

95-1003. **Duration of appointment.** Where counsel has been assigned, such assignment shall be effective until final judgment, including any proceeding upon direct appeal, unless relieved by order of the court.

Appointment after trial.

95-1004. **Appointment after trial.** Any court of record may assign counsel to defend any defendant, petitioner, or appellant in any post conviction criminal action or proceeding if he desires counsel and is unable to employ counsel.

Remuneration of appointed counsel.

95-1005. **Remuneration of appointed counsel.** Whenever, in a criminal action or proceeding, an attorney at law represents or defends any person by order of the court, on the ground that the person is financially unable to employ counsel, such attorney shall be paid for his services such sum as a district court or justice of the state supreme court certifies to be a reasonable compensation therefor and shall be reimbursed for reasonable costs incurred in the criminal proceeding. Such costs shall be chargeable to the county in which the proceeding arose.

Public defender's office.

95-1006. **Public defender's office.** Any county through its board of county commissioners, may provide for the creation of a public defender's office and the appointment of a salaried public defender and such assistant public defenders as may be necessary to satisfy the legal requirements in providing counsel for defendants unable to employ counsel. The costs of such office shall be at county expense.

Bail.

CHAPTER 11. BAIL

95-1101. **Purpose.** Bail is the security given for the purpose of insuring the presence of the defendant in a pending criminal proceeding.

Who may admit to bail.

95-1102. **Who may admit to bail.**

(a) Any judge may admit any defendant properly appearing before him in such proceeding to bail. When bound over to any court or judge having jurisdiction of the offense charged, bail shall be continued provided the court or judge having jurisdiction may increase, reduce or substitute bail. On appeal, any judge before whom the trial was had, or any judge having the power to issue a writ of habeas corpus, may admit the defendant to bail.

(b) Upon allowance and acceptance of bail the defendant, if he is in custody, must be discharged.

Setting and accepting bail in minor offenses.

95-1103. **Setting and accepting bail in minor offenses.** A justice of the peace or police judge may in his discretion establish and post a schedule of cash bail for offenses not amounting to a felony. A peace officer may accept bail in behalf of the justice of the peace or police judge in accordance with the schedule. In the event the peace officer accepts bail, he shall give a signed receipt to the offender setting forth the bail received. The peace officer shall then deliver the bail to the justice of the peace or police judge before whom the offender is to appear, and the justice of the peace or police judge shall give a receipt to the peace officer for the bail delivered.

Setting and accepting bail under a warrant of arrest.

95-1104 **Setting and accepting bail under a warrant of arrest.** A peace officer may accept cash bail in behalf of a judge where the warrant of arrest specifies the amount of bail. In the event the peace officer accepts bail, he shall give a signed receipt to the offender setting forth the bail received. The peace officer shall then deliver the bail to the justice of the peace or police judge before whom the offender is to appear, and the justice of the peace or police judge shall give a receipt to the police officer for the bail delivered.

Giving bail before another court or judge.

95-1105. **Giving bail before another court or judge.** The defendant, when arrested for a bailable offense must be taken without unnecessary delay before the nearest or most accessible judge in order that bail may be fixed. If the defendant is brought before a judge other than the court in which the charge is pending, the judge must establish and accept bail and set the time for the appearance of the defendant in the court in which the charge is pending. Upon acceptance of bail, the judge must deliver the bail without delay to the court in which the charge is pending.

Release on own recognizance.

95-1106. **Release on own recognizance.** Any person in custody, if otherwise eligible for bail, may be released on his personal recognizance subject to such conditions as the court may reasonably prescribe to assure his appearance when required. Any person released as herein provided shall be fully apprised by the court of the penalty provided for failure to comply with the terms of his recognizance.

Issuance of warrant.

95-1107. **Issuance of warrant.**

(a) Upon failure to comply with any condition of a bail or recognizance, the court having jurisdiction at the time of such failure may, in addition to any other action provided by law, issue a warrant for the arrest of the person at liberty on bail or on his own recognizance.

(b) On verified application by the state, setting forth facts or circumstances constituting a breach or threatened breach of any of the conditions of the bail or a threat or an attempt to influence the pending proceeding, the court may issue a warrant for the arrest of the defendant.

(c) Upon the arrest, the defendant shall be brought before the court without unnecessary delay and the court shall conduct a hearing and determine bail in accordance with section 95-1111.

Bailable offenses.

95-1108. **Bailable offenses.**

(a) All persons shall be bailable before conviction, except when death is a possible punishment for the offense charged and the proof is evident or the presumption great that the person is guilty of the offense charged.

(b) On the hearing of an application for admission to bail made before or after indictment or information for a capital offense, the burden of showing that the proof is evident or the presumption great that the defendant is guilty of the offense is on the state.

Bail after conviction.

95-1109. **Bail after conviction.** After conviction of an offense not punishable by death, a defendant who intends to appeal may be admitted to bail:

(a) As a matter of right, from a judgment imposing a fine only; or any judgment rendered by a justice or police court.

(b) As a matter of discretion in all other cases.

Determining the amount of bail.

95-1110. **Determining the amount of bail.** In all cases that bail is determined to be necessary, bail must be reasonable in amount and the amount shall be:

(a) Sufficient to assure compliance with the conditions set forth in the bail;

(b) Not oppressive;

(c) Commensurate with the nature of the offense charged;

(d) Considerate of the financial ability of the accused;

(e) Considerate of the defendant's prior record, employment status, and family background.

Modification of bail.

95-1111. **Reduction, increase, revocation or substitution of bail.**

(a) Upon application by the state or the defendant the court before which the proceeding is pending may increase, or reduce the amount of bail, substitute one bail for another or alter the conditions of the bail, or revoke bail.

(b) Reasonable notice of such application must be given to the opposing parties or their attorneys by the applicant after verdict of guilty and before judgment.

How bail is to be furnished.

95-1112. **How bail is to be furnished.** Bail may be furnished by the defendant in any of the following ways:

(a) By a deposit, with the clerk of the court, of an amount equal to the required bail, of cash, stocks, or bonds, or any combination thereof approved by the judge; or

(b) By real estate situated in this state with unencumbered equity not exempt owned by the accused or sureties worth double the amount of bail; or

(c) By a written undertaking executed by the defendant and by two sufficient sureties; or

(d) By a commercial surety bond executed by the defendant and by a qualified agent for and on behalf of such surety company.

Qualifications of bail.

95-1113. **Qualifications of bail.**

(a) If the bail is stock or bonds or both, the accused or sureties shall file a sworn schedule which shall contain a list of the stocks and bonds deposited describing each in sufficient detail that it may be identified and the market value of each stock or bond and the total market value of the stocks or bonds listed.

(b) If the bail is real estate, the accused or sureties shall file a sworn schedule which shall contain a legal de-

scription of the real estate, a description of any and all encumbrances on the real estate including the amount of each and the holder thereof, and the market value of the unencumbered equity owned by the affiant.

A certified copy of the schedule of real estate shall be filed immediately by the court in the office of the clerk and recorder of the county in which the property is situated, and the state shall have a lien on such real estate from the time the copies are filed. The clerk and recorder shall enter, index and record such schedules without requiring any advance fee, which fee shall be taxed as costs in the proceeding and paid out of such costs when collected.

(c) If the bail is a written undertaking with sureties, each surety must be a resident or freeholder within the state.

They must each be worth the amount specified in the undertaking, exclusive of property exempt from execution; but the court or magistrate, on taking bail, may allow more than two sureties to justify severally in amounts less than that expressed in the undertaking if the whole justification be equivalent to that of sufficient bail.

(d) If the bail is a commercial surety bond, it may be so done by any domestic or foreign surety company which is qualified to transact surety business in this state.

Bail, how to justify.

95-1114. **Bail, how to justify.** The sureties must, in all cases, justify by sworn affidavit that they each possess the qualifications provided in the preceding section. The court may further examine the sufficiency of the bail, upon oath, in such manner as it may deem proper. In all cases the state may challenge the bail or the sufficiency of the sureties.

Surrender of defendant.

95-1115. **Surrender of defendant.** At any time before the forfeiture of bail, the defendant may surrender himself to the officer to whose custody he was committed at the time of giving bail.

At any time before the forfeiture of bail, the sureties or surety company may surrender the defendant to the officer to whose custody he was committed and for this purpose may, themselves, arrest the defendant or by written authority endorsed on a certified copy of the undertaking may empower any person of suitable age and discretion to do so.

The officer must detain the defendant in his custody as upon commitment and shall file a certificate in the court having jurisdiction of the defendant, acknowledging the surrender. Such court may then order the bail exonerated.

Conditions of bail—when performed or not performed.

95-1116. **Conditions of bail, when performed — when not performed.**

(a) When the conditions of bail have been performed and the accused has been discharged from his obligations in the cause, the court shall return to him or his sureties the deposit of any cash, stocks or bonds. If the bail is real estate, the court shall notify, in writing, the registrar of titles or recorder of deeds and the lien of the bail bond on the real estate shall be discharged. If the bail is a written undertaking or a commercial surety bond, it shall be discharged and the sureties exonerated.

(b) If the accused does not comply with the conditions of the bail bond, the court having jurisdiction shall enter an order declaring the bail to be forfeited.

If such forfeiture is declared by a district court, notice of such order of forfeiture shall be mailed forthwith by the clerk of the court to the accused and his sureties at their last known address.

(c) If at any time within thirty (30) days after the forfeiture the defendant or his bail appear and satisfactorily excuse his negligence or failure to comply with the conditions of the bail, the court, in its discretion, may direct the forfeiture of the bail to be discharged upon such terms as may be just.

If such forfeiture is declared by a district court and if the forfeiture is not discharged as provided in this section, the court shall enter judgment for the state against the accused and his sureties for the amount of the bail and costs of the proceedings.

Disposition of judgment and execution.

95-1117. **Disposition of judgment and execution.**

(a) If judgment be rendered or the forfeiture not discharged, and the defendant has deposited money as bail, the court with whom it is deposited must, immediately

after receiving notice of said judgment or order of forfeiture, pay over the money deposited to the treasury of the city or county wherein the bail was taken.

(b) When judgment is entered in favor of the state, or the order of forfeiture is not discharged on any bail, execution may be issued forthwith for levy on stocks or bonds deposited with the court or upon the real estate described in the bail schedule. Such stocks, bonds and real estate shall be sold in the same manner as in execution sales in civil actions and the proceeds of such sale shall be used to satisfy all court costs and prior encumbrances, if any, and from the balance a sufficient sum to satisfy the judgment or forfeiture shall be paid into the treasury of the city or county wherein the bail bond was taken. The balance shall be returned to the owner. The real estate so sold may be redeemed in the same manner as real estate may be redeemed after execution sales in civil actions.

(c) When judgment is entered in favor of the state and against the sureties or the surety company or when the forfeiture has not been discharged, execution may be issued against the sureties or the surety company in the same manner as executions in civil actions.

Conditions of bail.

95-1118. **Conditions of bail.**

(a) If a person is admitted to bail before conviction, the conditions of bail bond shall be that he will appear to answer in the court having jurisdiction on a day certain and thereafter as ordered by the court until discharged on final order of the court and not depart this state without leave, and subject to any other conditions as the court may reasonably prescribe to assure his appearance when required.

(b) If the defendant is admitted to bail after conviction, the conditions of bail bond shall be that:

(1) He will duly prosecute his appeal;

(2) He will appear at such time and place as the court may direct;

(3) He will not depart this state without leave of the court; and

(4) If the judgment is affirmed or the cause reversed and remanded for a new trial, he will forthwith surrender to the officer from whose custody he was bailed.

Bail on a new trial.

95-1119. **Bail on a New Trial.** If the judgment of conviction is reversed and the cause remanded for a new trial, the trial court may order that the bail stand pending such trial, substitute, reduce, or increase bail.

Persons prohibited from furnishing bail security.

95-1120. **Persons Prohibited From Furnishing Bail Security.** No attorney at law and no official authorized to admit another to bail shall act as surety or furnish bail.

Sureties for guaranteed arrest bond certificates.

95-1121. **Sureties for Guaranteed Arrest Bond Certificates—Filing of Undertaking—Guaranteed Arrest Bond Certificate.**

Filing of undertaking.

(a) Any domestic or foreign surety company which has qualified to transact surety business in this state may, in any year, become surety in an amount not to exceed one hundred dollars ($100.00) with respect to any guaranteed arrest bond certificates issued in such year by an automobile club or association or by an insurance company authorized to write automobile liability insurance within this state, by filing with the commissioner of insurance an undertaking thus to become surety.

(b) Such undertaking shall be in form to be prescribed by the commissioner and shall state the following:

(1) The name and address of the automobile club or clubs, automobile association, or insurance company or companies, or associations with respect to the guaranteed arrest bond certificates of which the surety company undertakes to be surety.

(2) The unqualified obligation of the surety company to pay the fine or forfeiture in an amount not to exceed one hundred dollars ($100.00) of any person who, after posting a guaranteed arrest bond certificate with respect to which the surety company has undertaken to be surety, fails to make the appearance to guarantee which the guaranteed arrest bond certificate was posted.

Guaranteed arrest bond certificate.

(c) The term guaranteed arrest bond certificate, means any printed card or other certificate issued by an automobile club, association or insurance company, to any of its members or insureds, which said card or certificate is signed by such member or insured and contains a

printed statement that such automobile club, association, or insurance company and a surety company, or an insurance company authorized to transact both automobile liability insurance and surety business in the State of Montana, guarantee the appearance of the person whose signature appears on the card or certificate and that will, in the event of failure of such person to appear in court at the time of trial, pay any fine or forfeiture imposed on such person in an amount not to exceed one hundred dollars ($100.00).

Violations of motor vehicle laws—posting of arrest bond in lieu of cash.

95-1122. **Violations of Motor Vehicle Laws—Posting of Guaranteed Arrest Bond Certificate in Lieu of Cash.** Any guaranteed arrest bond certificate with respect to which a surety company has become surety or a guaranteed arrest bond certificate issued by an insurance company authorized to transact both automobile liability insurance and surety business within this state, as provided in section 95-1121, hereof, shall, when posted by the person whose signature appears thereon, be accepted in lieu of cash bail in an amount not to exceed one hundred dollars ($100.00) as a bail bond to guarantee the appearance of such person, in any court, including municipal courts, in this state, at such time as may be required by the court, when such person is arrested for violation of any motor vehicle law of this state or ordinance of any municipality in this state (except for the offense of driving while intoxicated or for any felony) committed prior to the date of expiration shown on such guaranteed arrest bond certificate so posted as a bail bond in any court in this state shall be subject to the forfeiture and enforcement provisions with respect to bail bonds posted in criminal cases as provided by law, and that any such guaranteed arrest bond certificate posted as bail bond in any municipal court in this state shall be subject to the forfeiture and enforcement provisions of the chapter or ordinance of the particular municipality pertaining to bail bonds posted.

Certification and withdrawal of sureties.

95-1123. **Certification of Names of Sureties—Withdrawal by Surety Company.** The commissioner of insurance shall certify to each justice of the peace, police magistrate and district judge the names of surety companies who have become sureties with respect to guaranteed arrest bond certificates, and shall likewise immediately notify such official upon the withdrawal of such

company as surety. No such withdrawal by any company shall be effective for thirty (30) days after the filing thereof with the state insurance commissioner.

CHAPTER 12. PRELIMINARY EXAMINATION

Preliminary examination.

Definition.

95-1201. **Definition of Preliminary Examination.** A preliminary examination is a hearing before a justice of the peace for the purpose of determining if there is probable cause to believe a felony has been committed by the defendant.

Proceedings at the preliminary examination.

95-1202. **Proceedings at the Preliminary Examination.** (a) The defendant shall not enter a plea. The judge shall hear the evidence without unnecessary delay. All witnesses shall be examined in the presence of the defendant. The defendant may cross-examine witnesses against him and may introduce evidence in his own behalf. If from the evidence it appears that there is probable cause to believe that an offense has been committed by the defendant the judge shall hold him to answer to the court having jurisdiction of the offense; otherwise, the judge shall discharge him.

(b) If the defendant waives preliminary examination the judge shall hold him to answer to the court having jurisdiction of the offense.

(c) The judge may in his discretion and must upon the request of the defendant, exclude from the preliminary examination every person not officially associated with the case before the court.

(d) The testimony of each witness, in case of homicide, must be reduced to writing, as a deposition, by a court appointed stenographer; in cases other than homicide the testimony of each witness shall be taken by a court appointed stenographer upon demand by the county attorney, or the defendant, or the defendant's counsel. After concluding the proceeding if the judge holds the defendant to answer he shall transmit forthwith to the clerk of the court having jurisdiction of the offense all papers in the proceeding and any bail taken by him.

Exclusion and separation of witnesses.

95-1203. **Exclusion and Separation of Witnesses.** During the examination of any witness or when the defendant is making a statement or testifying the judge may,

and on the request of the defendant or state shall, exclude all other witnesses. He may also cause the witnesses to be kept separate and to be prevented from communicating with each other until all are examined.

Recognizance by or deposition of witness.

95-1204. **Recognizance by or Deposition of Witness.** If the defendant is held to answer after a preliminary examination or after the defendant has waived a preliminary examination or after the district court has granted leave to file an information or after an indictment has been returned, the judge may require:

(a) Any material witness for the state or defendant to enter into a written undertaking;

(1) To appear at the trial, and

(2) May provide for the forfeiture of a sum certain in the event the witness does not appear at the trial.

(b) Any witness who refuses to enter into a written undertaking may be remanded to custody but shall not be held longer than is necessary to take his deposition.

After the deposition is taken the witness must be immediately discharged.

(c) Such deposition must be taken in the presence of the county attorney and the defendant and his counsel, unless either the county attorney or the defendant and his counsel fail to attend after reasonable notice of the time and place set for taking the deposition.

CHAPTER 13.

LEAVE TO FILE INFORMATION AND TIME FOR FILING INFORMATION.

Leave to file information.

95-1301. **Leave to File Information.**

(a) The county attorney may apply directly to the district court for permission to file an information against a named defendant. The application must be by affidavit supported by such evidence as the judge may require. If it appears that there is probable cause to believe that an offense has been committed by the defendant the judge shall grant leave to file the information, otherwise the application shall be denied.

(b) When there has been granted leave to file an information against the defendant, a warrant may issue

for his arrest and he must be brought before the court, unless the court orders otherwise.

(c) If the person against whom an information is sought to be filed is a district court judge, the county attorney shall apply directly to the Supreme Court for permission to file the information. The Supreme Court shall then proceed in the manner provided in section 95-1301(a).

When leave is granted by the Supreme Court it shall designate and direct a judge of the district court of another district to preside at the trial of such information, and hear and determine all pleas and motions affecting the defendant thereunder before and after judgment. All necessary records shall be transferred to the clerk of the district court of the district in which the action arose.

Time for filing the information.

95-1302. **Time for Filing the Information.** After the defendant has been examined and held to answer, or has waived preliminary examination as provided in section 95-1202 of this code, or after leave of court has been granted as provided in section 95-1301 of this code, the county attorney must file, within thirty days, in the proper district court an information charging the defendant with the offense for which he is held to answer, or any other offense disclosed by the evidence. If the county attorney fails to file the information within the time specified he may be found guilty of contempt, and may be prosecuted for neglect of duty.

The county attorney not filing an information.

95-1303. **The County Attorney Not Filing an Information.** If the county attorney determines an information ought not to be filed after the defendant has been held to answer following a preliminary examination or waiver thereof, or after leave to file has been granted, he must within 30 days make, subscribe, and file with the clerk of the court a statement in writing containing his reasons in fact and in law for not filing an information. The court must examine such statements together with the evidence filed in the case, and if upon such examination, the court is not satisfied with the statement, the county attorney shall be directed and required by the court to file the proper information and bring the case to trial.

Grand jury—summoning.

CHAPTER 14. GRAND JURY

95-1401. **Summoning Grand Juries.** A grand jury must only be drawn and summoned when the district judge in his discretion considers a grand jury necessary and shall so order. The grand jury must consist of seven persons, of whom five must concur to find an indictment. The district judge may direct the selection of one or more alternate jurors who shall sit as regular jurors before an indictment is found or a grand jury investigation is concluded. If a member of the jury becomes unable to perform his duty he may be replaced by an alternate. The composition and drawing of a grand jury shall be in accordance with the provisions of section 93-1801 to section 93-1804.

Objections to grand jury and to grand jurors.

95-1402. **Objections to Grand Jury and to Grand Jurors.**

(a) The state may challenge the panel of a grand jury on the grounds that the grand jury was not selected, drawn or summoned according to law, and may challenge an individual juror on the ground that the juror is not legally qualified. Challenges may be oral or in writing and shall be tried and decided by the court. At any time for cause shown the court may excuse or discharge a juror or jurors either temporarily or permanently and in the latter event the court may impanel another person or persons in place of the juror or jurors discharged.

Motion to dismiss.

(b) **Motion to Dismiss.** A motion to dismiss the indictment may be based on the grounds that the grand jury was not selected, drawn or summoned according to law, or that an individual juror was not legally qualified. An indictment shall not be dismissed on the ground that one or more members of the grand jury were not legally qualified if it appears from the record kept pursuant to section 95-1403 of this code that 5 or more jurors after deducting those not legally qualified, concurred in finding the indictment.

Foreman.

95-1403. **Foreman.** The court shall appoint one of the jurors to be foreman. The foreman shall have the power to administer oaths and affirmations and shall sign all indictments. He or another juror designated by him shall keep a record of the number of jurors concurring in the finding of every indictment and shall file the

record with the clerk of court, but the record shall not be made public except on order of the court.

95-1404. **Charge by Court.**

Charge by court.

(a) When the grand jury is impaneled and sworn, it shall be charged by the judge who summoned it. In doing so, the court shall give the grand jurors such informaiton as it deems proper, or as is required by law, as to their duties, and as to any charges of public offenses known to the court and likely to come before the grand jury.

(b) When the grand jury has been impaneled, sworn and charged, it shall retire to a private room, and inquire into the offenses cognizable by it. When the grand jury certifies completion of business before it and the court concurs, it shall be discharged by the court.

95-1405. **Powers and Duties of Grand Jury.**

Powers and duties of grand jury.

(a) The grand jury may inquire into all public offenses committed or triable within the county and present them to the court by indictment.

(b) If a member of a grand jury knows, or has reason to believe, that a public offense, triable within the county, has been committed, he shall declare it to his fellow jurors, who shall thereupon investigate it.

(c) The grand jury may inquire into:

(1) The case of every person imprisoned in the jail of the county on a criminal charge and not indicted, or against whom an information or complaint has not been filed.

(2) The condition and management of the public prisons within the county.

(3) The willful or corrupt misconduct in office of public officers of every description within the county.

(d) The grand jury is entitled to free access, at all reasonable times, to the public prisons and to the examination without charge, of all public records within the county.

(e) If, in the judgment of the grand jury, the services of an expert are necessary, the grand jury may employ one or more at an agreed compensation, to be first approved by the court. If, in the judgment of the grand

jury, the services of assistants to such experts are required, the grand jury may employ such assistants, at a compensation to be agreed upon and approved by the court.

(f) All expenses of the grand jury, including special counsel and investigators, if any, shall be paid by the treasurer of the county out of the general fund of the county upon warrants drawn by the county auditor or the clerk of the district court upon the written order of the judge of the district court of the county.

Who may advise grand jury and who may be present.

95-1406. **When and From Whom They May Ask Advice and Who May Be Present During Their Sessions.**

(a) The grand jury may, at all times, ask the advice of the court, or the judge thereof, or the attorney general or of the county attorney. Unless such advice is asked, the judge of the court shall not be present during the sessions of the grand jury.

(b) The county attorney of the county or the attorney general may at all times appear before the grand jury for the purpose of giving information or advice relative to any matter cognizable by the grand jury, and may interrogate witnesses before the grand jury whenever he thinks it necessary. When a charge against or involving the county attorney, or deputy county attorney, or anyone employed by or connected with the office of the county attorney, is being investigated by the grand jury, such county attorney, or deputy county attorney or all or any one or more of them, shall not be allowed to be present before such grand jury when such charge is being investigated, in an official capacity but only as a witness, and he shall only be present while a witness and after his appearance as such witness shall leave the place where the grand jury is holding session.

(c) When requested to do so by the grand jury of any county, the attorney general or county attorney may employ special counsel and investigators, whose duty it shall be to investigate and present the evidence in such investigation to such grand jury.

(d) The grand jury or county attorney may require by subpoena the attendance of any person before the grand jury as interpreter. While his services are necessary, such interpreter may be present at the examination

of witnesses before the grand jury. The compensation for services of such interpreter constitutes a charge against the county, and shall be fixed by the grand jury, in an amount to be approved by the court and paid out of the county treasury on a warrant of the county auditor upon an order of the judge of the district court.

(e) Transcript of Testimony.

(1) The grand jury may appoint a stenographer to take in shorthand the testimony of witnesses or the testimony may be taken by a recording device, but the record so made shall include the testimony of all witnesses on that particular investigation. The shorthand notes or the recordings and transcript of the same, if any, shall be delivered to and retained by the clerk of the district court.

(2) The stenographer and any typist who transcribes the stenographer's notes or recordings shall be sworn by the foreman not to disclose any testimony or the names of any witnesses except when so ordered by the court. The stenographic reporter shall certify and file with the clerk of the district court an original transcription of his shorthand notes and a copy thereof and as many additional copies as there are defendants. The reporter shall complete such certification and filing within 10 days after the indictment has been found or the accusation presented unless the court for good cause makes an order extending the time. The clerk of the district court shall deliver the original of the transcript so filed with him to the county attorney immediately upon his receipt thereof, shall retain one copy for use only by judges in proceedings relating to the indictment or accusation, and shall deliver a copy of such transcript to each such defendant or his attorney.

Subpoena of witnesses; issuance.

95-1407. **Subpoena of Witnesses; Issuance.** A subpoena requiring the attendance of a witness before the grand jury may be signed and issued by the county attorney, by the grand jury or by the judge of the district court, for witnesses in the state, in support of the prosecution, for those witnesses whose testimony, in his opinion is material in an investigation before the grand jury, and for such other witnesses as the grand jury upon investigation pending before them may direct.

Reception of evidence.

95-1408. **Reception of Evidence.**

(a) In the investigation of a charge, the grand jury shall receive no other evidence than that given by witnesses produced and sworn before the grand jury, furnished by legal documentary evidence, or the deposition of a witness in the cases mentioned in section 95-1802.

(b) The grand jury is not required to hear evidence for the defendant, but it shall weigh all the evidence submitted to it, and when it has reason to believe other evidence within its reach will explain away the charge, it shall order the evidence to be produced, and for that purpose may require the county attorney to issue process for witnesses.

(c) The grand jury shall find an indictment when all the evidence before it, taken together, if unexplained or uncontradicted, would, in its judgment, warrant a conviction by a trial jury.

Secrecy of proceedings and disclosure.

95-1409. **Secrecy of Proceedings and Disclosure.** Disclosure of matters occurring before the grand jury other than its deliberations and the vote of any juror may be made to the county attorney for use in the performance of his duty. Otherwise a juror, attorney, interpreter, stenographer, operator of a recording device, or any typist who transcribes recorded testimony may disclose matters occurring before the grand jury only when so directed by the court preliminary to or in connection with a judicial proceeding or when permitted by the court at the request of the defendant upon a showing that grounds may exist for a motion to dismiss the indictment because of matters occurring before the grand jury under section 95-1402(b). No obligation of secrecy may be imposed upon any person except in accordance with this rule. The court may direct that an indictment shall be kept secret until the defendant is in custody or has given bail, and no person shall disclose the finding of the indictment except when necessary for the issuance and execution of a warrant or summons.

Finding and presentment of the indictment.

95-1410. **Finding and Presentment of the Indictment.**

(a) An indictment cannot be found without the concurrence of at least five grand jurors. When so found it must be indorsed, "a true bill," and the endorsement must be signed by the foreman of the grand jury.

(b) Indictment, How Presented and Filed:

(1) An indictment, when found by the grand jury, must be presented by their foreman, in their presence, to the court, and must be filed with the clerk.

(2) When an indictment is filed against a district court judge, it must be transmitted directly to the Supreme Court, who shall thereupon designate and direct a judge of the district court of another district to preside at the trial of such indictment and hear and determine all pleas and motions affecting the defendant thereunder before and after judgment.

(c) If the defendant is in custody or has given bail and five (5) jurors do not concur in finding an indictment, the foreman shall so report to the court in writing forthwith.

(d) When an indictment is found against a defendant, a warrant must issue for his arrest and he must be brought before the court, unless the court orders otherwise.

CHAPTER 15. CHARGING AN OFFENSE

Charging an offense.

Methods of prosecution.

95-1501. **Methods of Prosecution.** When authorized by law a prosecution may be commenced by:

(a) A complaint;

(b) An information following a preliminary examination, or waiver thereof;

(c) An information after leave of court has been granted;

(d) An indictment upon a finding by a grand jury.

Commencement of prosecutions.

95-1502. **Commencement of Prosecutions.**

(a) All prosecutions of offenses triable in the district courts shall be by indictment or information except as otherwise provided by Chapter 55, Title 94, R.C.M. 1947.

(b) All other prosecutions of offenses may be by complaint.

Form of charge.

95-1503. **Form of Charge.** A charge shall:

(a) Be in writing and in the name of the State of Montana, or in the name of a municipality if a violation of a municipal ordinance is charged, and

(b) Specify the name of the court in which the charge is filed, and

(c) Charge the commission of an offense by:

(1) stating the name of the offense;

(2) citing in customary form the statute, rule, regulation or other provision of law which the defendant is alleged to have violated;

(3) stating the facts constituting the offense in ordinary and concise language and in such manner as to enable a person of common understanding to know what is intended;

(4) stating the time and place of the offense as definitely as can be done; and

(5) stating the name of the accused, if known, and if not known, designate the accused by any name or description by which he can be identified with reasonable certainty.

(d) If the charge is by information or indictment, it shall include indorsed thereon, the names of the witnesses for the state, if known.

(e) If the charge is by complaint it shall be signed on oath by a person having knowledge of the facts or by the county attorney; if by information, it shall be signed by the county attorney or by his deputy; if by indictment, it shall be signed by the foreman of the grand jury.

(f) If the charge is by information or indictment it must be recorded by the clerk within five days after the same is filed, in a book to be kept for that purpose. The judge must compare the record with the original indictment or information and certify the correctness thereof. In case the original is lost or destroyed, the defendant may be tried upon a copy taken from the record, and certified by the clerk.

Joinder of offenses and of defendants.

95-1504. **Joinder of Offenses and of Defendants.**

(a) An indictment, information, complaint or accusation may charge two or more different offenses connected together in their commission, or different statements of the same offense or two or more different offenses of the same class of crimes or offenses, under separate counts,

and if two or more indictments, informations, complaints or accusations are filed in such cases in the same court, the court may order them to be consolidated. Allegations made in one count may be incorporated by reference in another count. The prosecution is not required to elect between the different offenses or counts set forth in the indictment, information, complaint or accusation, but the defendant may be convicted of any number of the offenses charged, and each offense of which the defendant is convicted must be stated in the verdict or the finding of the court; provided, that the court in which the case is triable, in the interests of justice and for good cause shown, may in its discretion order that the different offenses or counts set forth in the indictment, information, complaint and accusation be tried separately or divided into two or more groups and each of said groups tried separately. An acquittal of one or more counts shall not be deemed an acquittal of any other count.

(b) Two or more defendants may be charged in the same indictment or information if they are alleged to have participated in the same series of acts or transactions constituting an offense or offenses. Such defendants may be charged in one or more counts together or separately and all of the defendants need not be charged in each count.

(c) If it appears that a defendant or the state is prejudiced by a joinder of related prosecutions or defendants in a single charge or by joinder of separate charges or defendants for trial the court may order separate trials, grant a severance of defendants, or provide any other relief as justice may require.

Amending the charge.

95-1505. **Amending the Charge.**

(a) A charge may be amended in matters of substance at any time before the defendant pleads, without leave of court.

(b) The court may permit any charge to be amended as to form at any time before verdict or finding if no additional or different offense is charged and if the substantial rights of the defendant are not prejudiced.

(c) No charge shall be dismissed because of a formal defect which does not tend to prejudice a substantial right of the defendant.

Prior conviction.

95-1506. **Prior Conviction.** When the state seeks increased punishment of the accused as a prior convicted felon under section 94-4713, notice of that fact must be given in writing to the accused or his attorney before the entry of a plea of guilty by the accused, or before the case is called for trial upon a plea of not guilty. Such notice must conform to the following provisions:

(a) The notice must specify the prior convictions alleged to have been incurred by the accused.

(b) The notice and the charges of prior convictions contained therein shall not be made public nor in any manner be made known to the jury before the jury's verdict is returned upon the felony charge.

(c) If the accused is convicted upon the felony charge, the notice, together with proper proof of timely service, shall be filed with the court before the time fixed for sentence. The court shall then fix a time for hearing with at least 3 days notice to the accused.

(d) The hearing shall be held before the court alone. If the court finds any of the allegations of prior conviction true, the accused shall be sentenced under the provisions of section 94-4713.

Arraignment of defendant.

CHAPTER 16. ARRAIGNMENT OF DEFENDANT.

Arraignment defined.

95-1601. **Arraignment Defined.** Arraignment is the formal act of calling the defendant into open court to answer the charge against him.

Place of arraignment.

95-1602. **Place of Arraignment.** The defendant shall be arraigned in the court in which the indictment, information or complaint is filed, unless before arraignment the cause has been removed to another court, in which case he shall be arraigned in that court.

Presence of defendant.

95-1603. **Presence of Defendant.** If the offense charged is a felony, the defendant must be personally present for arraignment; but if a misdemeanor, he may appear by counsel.

Bringing defendant into court.

95-1604. **Bringing Defendant Into Court.** The court may direct any official who has custody of the defendant to bring him before the court to be arraigned.

Joint defendants.

95-1605. **Joint Defendants.** Defendants who are jointly charged may be arraigned separately or together, in the discretion of the court.

Procedure on arraignment.

95-1606. **Procedure on Arraignment.** The arraignment in any court in this state must be conducted in the following manner:

(a) The arraignment must be in open court.

(b) The court must inquire of the defendant or his counsel the defendant's true name and if the defendant's true name be given as any other than that used in the charge, the court must order the defendant's name to be substituted for the name under which he is charged, and the subsequent proceedings must be conducted with the defendant charged under that name, but in the discretion of the court the defendant may also be referred to by the name by which he was first charged.

(c) The court must determine whether the defendant is under any disability which would prevent the court in its discretion from proceeding with the arraignment. The arraignment may be continued until such time as the court determines the defendant is able to proceed.

(d) The defendant shall be advised by the court as follows:

(1) Of the nature of the crime charged against him;

(2) Of the punishment as set forth by statute for the crime charged;

(3) If the defendant appears for arraignment without counsel the court shall advise him of his right to counsel and of his right to assigned counsel if he is unable to employ counsel. If counsel is or has been waived by the defendant the court shall ascertain if the waiver is or was voluntary before proceeding;

(4) Of the time prescribed by statute to enter a plea;

(5) Of his right to secure bail to release him from custody.

(e) The court, or the clerk or county attorney under its direction must deliver to the defendant a true copy of the indictment, information or complaint, including the endorsements thereon and the list of witnesses, when

required, and read the indictment, information or complaint to the defendant, unless the defendant or his counsel waives such reading, and ask him whether he pleads guilty or not guilty to the indictment, information or complaint.

The defendant shall enter a plea of guilty or not guilty to the indictment, information or complaint. If the defendant refuses to plead to the indictment, information or complaint a plea of not guilty must be entered.

The court may refuse to accept a plea of guilty and shall not accept the plea of guilty without first determining that the plea is voluntary with an understanding of the charge.

(f) The court must prepare and keep a written record of all arraignment proceedings. In district courts a verbatim record of all arraignment proceedings must be made, preserved and filed with the court.

Time allowed to answer.

95-1607. **Time Allowed to Answer.** If, on the arraignment, the defendant requires it, he must be allowed a reasonable time, not less than one (1) day, to answer or otherwise plead to the indictment, information or complaint. The answer may include appropriate pre-trial motions.

Irregularity of arraignments.

95-1608. **Irregularity of Arraignment.** No irregularity in the arraignment which does not affect the substantial rights of the defendant shall affect the validity of any proceeding in the cause if the defendant pleads to the charge or proceeds to trial without objecting to such irregularity.

Pre-trial motions.

CHAPTER 17. PRE-TRIAL MOTIONS.

Defenses and objections which may be raised before trial.

95-1701. **Defenses and Objections Which May Be Raised Before Trial.** Any defense or objection which is capable of determination without the trial of the general issue may be raised before trial by motion to dismiss or for other appropriate relief. The motion shall state with particularity the grounds therefor and the order or relief sought.

Defenses and objections which must be raised before trial.

95-1702. **Defenses and Objections Which Must Be Raised Before Trial.** Defenses and objections based on defects in the institution of the prosecution or in the complaint, indictment or information other than that it

fails to show jurisdiction in the court or to charge an offense may be raised only before trial by motion to dismiss or for other appropriate relief. The motion shall include all such defenses and objections then available to the defendant. Failure to present any such defense or objection as herein provided constitutes a waiver thereof, but the court for cause shown may grant relief from the waiver. Lack of jurisdiction or the failure of the indictment, information, or complaint to charge an offense shall be noticed by the court at any time during the pendency of the proceeding.

Dismissal on motion of court or application of attorney prosecuting.

95-1703. **Dismissal on Motion of Court or Application of Attorney Prosecuting.** The court may, either on its own motion or upon the application of the attorney prosecuting, and in furtherance of justice, order an action, complaint, information, or indictment to be dismissed. The reasons of the dismissal must be set forth in an order entered upon the minutes.

Time of making motion.

95-1704. **Time of Making Motion.** The motion shall be made before the plea is entered, but the court for cause may permit it to be made within a reasonable time thereafter.

Hearing on motion.

95-1705. **Hearing on Motion.** A motion before trial raising defenses or objections shall be determined before trial unless the court orders that it be deferred for determination at the trial of the general issue.

Effect of determination.

95-1706. **Effect of Determination.** If a motion is determined adversely to the defendant he shall plead if he has not previously pleaded. A plea previously entered shall stand. If the court directs the action to be dismissed, the defendant must, if in custody, be discharged therefrom; or, if admitted to bail, his bail exonerated, or money deposited instead of bail must be refunded to him. However, if the court grants a motion to dismiss based on a defect in the institution of the prosecution or in the indictment, information, or complaint, or when it appears at any time before judgment that a mistake has been made in charging the proper offense, it may also order that the defendant be held in custody or that his bail be continued for a specified time pending the filing of a new complaint, indictment or information.

Transfer of trial.

95-1707. **Transfer of Trial.** If the court determines that the motion to dismiss, based upon the grounds of

lack of jurisdiction or improper place of trial, is well founded it may, instead of dismissal, order the cause transferred to a court of competent jurisdiction or to a proper place of trial.

Motion for continuance.

95-1708. **Motion for Continuance.**

(a) The defendant or the state may move for a continuance. If the motion is made more than thirty days after arraignment or at any time after trial has begun the court may require that it be supported by affidavit.

(b) The court may upon the motion of either party or upon the court's own motion order a continuance if the interests of justice so require.

(c) All motions for continuance are addressed to the discretion of the trial court and shall be considered in the light of the diligence shown on the part of the movant.

(d) This section shall be construed to the end that criminal cases are tried with due diligence consonant with the rights of the defendant and the state to a speedy trial.

Substitution of judge.

95-1709. **Substitution of Judge.**

(a) The defendant or the prosecution may move the court in writing for a substitution of judge on the ground that he cannot have a fair and impartial hearing or trial before said judge. The motion shall be made at least fifteen days prior to the trial of the case, or any retrial thereof after appeal, except for good cause shown. Upon the filing of such a motion the judge against whom the motion is filed shall be without authority to act further in the criminal action, motion or proceeding but the provisions of this section do not apply to the arrangement of the calendar, the regulation of the order of business, the power of transferring the criminal action or proceeding to some other court, nor to the power of calling in another judge to sit and act in such criminal action or proceeding, providing that no judge shall so arrange the calendar as to defeat the purposes of this section. Not more than one judge can be disqualified in the criminal action or proceeding, at the instance of the prosecution and not more than one judge at the instance of the defendant or defendants.

If either party in any matter above-mentioned shall file the affidavit as herein provided such party may not complain of any reasonable delay as the result thereof.

The provision of this section shall be inapplicable to any person in any cause involving a direct contempt of court.

(b) In addition to the provision of subsection (a) any defendant may move at any time for substitution of judge for cause, supported by affidavit. Upon the filing of such motion the court shall conduct a hearing and determine the merits of the motion.

Change of place of trial.

95-1710. **Change of Place of Trial.**

(a) The defendant or the prosecution may move for a change of place of trial on the ground that there exists in the county in which the charge is pending such prejudice that a fair trial cannot be had in such county. The motion shall be made at least fifteen days prior to trial, unless, for good cause shown, it may be made thereafter.

(b) The motion shall be in writing and supported by affidavit which shall state facts showing the nature of the prejudice alleged. The defendant or the state may file counter-affidavits. The court shall conduct a hearing and determine the merits of the motion.

(c) If the court determines that there exists in the county where the prosecution is pending such prejudice that a fair trial cannot be had it shall transfer the cause to any other court of competent jurisdiction in any county where a fair trial may be had.

CHAPTER 18.

Production and suppression of evidence.

PRODUCTION AND SUPPRESSION OF EVIDENCE.

Subpoenas.

95-1801. **Subpoenas.**

(a) Upon the request of the prosecuting attorney or the defendant or his attorney, the court or the clerk of the court shall issue subpoenas. The subpoena shall state the name of the court and the title, if any, of the proceeding, and shall command each person to whom it is directed to attend and give testimony and produce objects and documents at the time and place specified therein.

Indigent defendants

(b) **Indigent Defendants.** When the defendant is indigent a court order must be obtained if more than six (6) witnesses are to be subpoenaed. If a witness is to be paid more than the regular fee, or there are more than six (6) witnsses to be paid an order of the court or judge is needed; such order may be made upon proper showing by affidavit or otherwise.

Expenses of witnesses.

(c) **Expenses of Witness.** When a person attends before a magistrate, grand jury, or court, as a witness in a criminal case, upon a subpoena or in pursuance of an undertaking, the judge, at his discretion, by a written order, may direct the clerk of the court to draw his warrant upon the county treasurer in favor of such witness for a reasonable sum, to be specified in the order, for the necessary expenses of the witness.

(d) In all criminal cases originally triable in the district court the following rules shall apply: Upon motion of either party and upon showing of good cause, the court may issue a subpoena prior to the trial directing any person other than the defendant to produce books, statements, papers and objects before the court at a time prior to the trial or prior to the time when they are to be offered in evidence and the court may, upon their production, permit the books, statements, papers or objects or portions thereof to be inspected, copied, or photographed by the parties and their attorneys.

Upon motion of the defendant, within a reasonable time before trial, the court may, upon a showing of good cause, at a time and place designated by the court, order the prosecution to produce prior to trial for inspection, photographing or copying by the defendant, designated books, statements, papers, or objects obtained from the defendant or others by the prosecution which are material, relevant and necessary to the preparation of the defendant's case.

Service.

(e) **Service.** A subpoena may be served by a peace officer or by any other person who is not a party and who is not less than 18 years of age, but a peace officer must serve in his county any subpoena delivered to him for service, either on the part of the state or of the defendant. The person making the service must without delay, make a written return of the service, subscribed by him, stating the time and place of service. Service of

a subpoena shall be made by delivering a copy thereof to the person named, and if ordered by the court, by tendering to those residing outside the county of trial the fee for one day's attendance and the mileage allowed by law.

Place of service.

(f) **Place of Service.** A subpoena requiring attendance of a witness at a hearing or trial may be served anywhere within the State of Montana.

Deposition.

95-1802. **Depositions.**

Grounds.

(a) **Grounds for Taking Depositions:**

(1) If it appears that a prospective witness may be unable to attend or prevented from attending a trial or hearing or is or may become a non-resident of the state, or is unwilling to provide relevant information to a requesting party, and that his testimony is material and that it is necessary to take his deposition in order to prevent a failure of justice, the court, at any time after the preliminary hearing or the filing of the indictment or the information, may upon motion and notice to the parties order that his testimony be taken by deposition and that any designated books, papers, documents, or tangible objects, not privileged, be produced at the same time and place.

(2) If a witness is committed for failure to give bail to appear to testify at a trial or hearing, the court must direct that his deposition be taken at the expense of the state. After the deposition has been subscribed the court shall discharge the witness.

Notice.

(b) **Notice of Taking.** The party at whose instance a deposition is to be taken shall give to every other party reasonable written notice of the time and place for taking the deposition. The notice shall state the name and address of each person to be examined. On motion of a party upon whom the notice is served, the court for cause shown may extend or shorten the time.

(c) **How Taken.** A deposition shall be taken in the manner provided in civil actions. The court at the request of a defendant may direct that a deposition be taken on written interrogatories in the manner provided in civil actions.

Filing.

(d) **Filing Deposition.** The court shall transmit the deposition to the clerk of the court making the order,

there to be filed and held until the action shall come on for trial.

Use.

(e) **Use.** At the trial or upon any hearing, a part or all of a deposition, so far as otherwise admissible under the rules of evidence, may be used if it appears: That the witness is dead; or that the witness is out of the state of Montana unless it appears that the absence of the witness was procured by the party offering the deposition; or that the witness is unable to attend or testify because of sickness or infirmity; or that the party offering the deposition has been unable to procure the attendance of the witness by subpoena. Any deposition may also be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness. If only a part of a deposition is offered in evidence by a party, an adverse party may require him to offer all of it which is relevant to the part offered and any party may offer other parts. For the purposes of this section, the word "deposition" shall in addition include any sworn testimony previously given by a witness which has been recorded and transcribed by a qualified stenographer and given in the presence of the defendant and cross-examined by him or his attorney on matters relevant to the trial or hearing where such deposition is sought to be used.

Objections.

(f) **Objections to Admissibility.** Objections to receiving in evidence a deposition or part thereof may be made as provided in civil actions.

(g) **At Instance of the State or Witness.** The following additional requirements shall apply if the deposition is taken at the instance of the state or a witness. The officer having custody of a defendant shall be notified of the time and place set for examination and keep him in the presence of the witness during the examination. A defendant not in custody shall be given notice and shall have the right to be present at the examination. The state shall pay to the defendant's attorney and to a defendant not in custody expenses of travel and subsistence for attendance at the examination.

Discovery, inspection and notice.

95-1803. **Discovery, Inspection, and Notice.** In all criminal cases originally triable in district court the following rules shall apply:

List of witnesses.

(a) **List of Witnesses:**

(1) For the purpose of notice only and to prevent surprise, the prosecution shall furnish to the defendant and file with the clerk of the court at the time of arraignment, a list of the witnesses intended to be called by the prosecution. The prosecution may, any time after arraignment, add to the list the names of any additional witnesses, upon a showing of good cause. The list shall include the names and addresses of the witnesses.

(2) The requirement of subsection (a) (1), of this section, shall not apply to rebuttal witnesses.

Subpoenas.

(b) Subpoenas may be used as a discovery device as provided for under section 95-1801 (d).

Documents, papers or things.

(c) On motion of any party within a reasonable time before trial all parties shall produce at a reasonable time and place designated by the court all documents, papers or things which each party intends to introduce in evidence. Thereupon any party shall, in the presence of a person designated by the court, be permitted to inspect or copy any such documents, papers or things. The order shall specify the time, place and manner of making the inspection and of taking the copies or photographs and may prescribe such terms and conditions as are just. If the evidence relates to scientific tests or experiments the opposing party shall, if practicable, be permitted to be present during the tests and to inspect the results thereof. Upon a sufficient showing the court may at any time order that the discovery or inspection be denied, restricted or deferred, or make other appropriate orders. If, subsequent to compliance with an order issued pursuant to this rule, and prior to or during trial, a party discovers additional material previously requested which is subject to discovery or inspection under the rule he shall promptly notify the other party or his attorney or the court of the existence of the additional material. The court shall exclude any evidence not presented for inspection or copying pursuant to this rule, unless good cause is shown for failure to comply. In the latter case the opposing party shall be entitled to recess or a continuation during which it may inspect or copy the evidence in the manner provided for above.

Mental condition.

(d) For purpose of notice only and to prevent surprise, the defendant shall furnish to the prosecution and

file with the clerk of the court at the time of entering his plea of not guilty or within ten days thereafter or at such later time as the court may for good cause permit, a statement of intention to interpose the defense of insanity, self-defense or alibi. If the defendant intends to interpose any of these defenses, he shall also furnish to the prosecution and file with the clerk of the court, the names and addresses of all witnesses to be called by the defense in support thereof. The defendant may, prior to trial, upon motion and showing of good cause, add to the list of witnesses the names of any additional witnesses. After the trial commences, no witnesses may be called by the defendant in support of these defenses, unless the name is included on such list, except upon good cause shown.

Privilege.

(e) All matters which are privileged upon the trial, are privileged against disclosure through any discovery procedure.

Motion to produce confession or admission.

95-1804. **Motion to Produce Confession or Admission.**

(a) On motion of a defendant in any criminal case made prior to trial the court shall order the state to furnish the defendant with a copy of any written confession or admission and a list of the witnesses to its making. If the defendant has made an oral confession or admission a list of the witnesses to its making shall be furnished.

(b) The list of witnesses may upon notice and motion be amended by the state prior to trial.

(c) No such confession or admission shall be received in evidence which has not been furnished in compliance with subsection (a) of this section unless the court is satisfied that the prosecutor was unaware of the existence of such confession or admission prior to trial and that he could not have become aware of such in the exercise of due diligence.

Motion to suppress confession or admission.

95-1805. **Motion to Suppress Confession or Admission.**

(a) A defendant may move to suppress as evidence any confession or admission given by him on the ground that it was not voluntary.

(b) The motion shall be made before the trial unless for good cause shown the court shall otherwise direct.

(c) The defendant shall give at least ten (10) days notice of such motion to the attorney prosecuting or such other time as the court may direct. The defendant shall serve a copy of the notice and motion upon the attorney prosecuting.

(d) The motion shall be in writing and state facts showing wherein the confession or admission was involuntary.

(e) If the allegations of the motion state facts which if true, show that the confession or admission was not voluntarily made the court shall conduct a hearing into the merits of the motion.

(f) The burden of proving that a confession or admission was involuntary shall be on the defendant.

(g) The issue of the admissibility of the confession or admission shall not be submitted to the jury. If the confession or admission is determined to be admissible the circumstances surrounding the making of the confession or admission may be submitted to the jury as bearing upon the credibility or the weight to be given to the confession or admission.

(h) If the motion is granted the confession or admission shall not be admissible in evidence against the movant at the trial of the case.

Motion to suppress evidence illegally seized.

95-1806. **Motion to Suppress Evidence Illegally Seized.**

(a) A defendant aggrieved by an unlawful search and seizure may move the court to suppress as evidence anything so obtained.

(b) The motion shall be made before trial unless for good cause shown the court shall otherwise direct.

(c) The defendant shall give at least ten (10) days notice of such motion to the attorney prosecuting or such other time as the court may direct. The defendant shall serve a copy of the notice and motion upon the attorney prosecuting.

(d) The motion shall be in writing and state facts showing wherein the search and seizure were unlawful.

(e) If the allegations of the motion state facts which if true show that the search and seizure were unlawful the court shall conduct a hearing into the merits of the motion.

(f) The burden of proving that the search and seizure were unlawful shall be on the defendant.

(g) If the motion is granted the evidence shall not be admissible against the movant at any trial of the case.

Trial in district court.

CHAPTER 19. TRIAL IN DISTRICT COURT.

Method of trial.

95-1901. **Method of Trial.**

(a) All prosecutions except on a plea of guilty, deciding issues of fact shall be tried by the court and jury.

(b) Questions of law shall be decided by the court and questions of fact by the jury except on a trial for libel the jury shall determine both questions of law and of fact.

(c) Defendants in all criminal cases shall have a right to trial by jury not to exceed twelve in number. However, if no capital offense is involved, the parties may agree in writing, at any time before the verdict, with the approval of the court that the jury shall consist of any number less than twelve.

(d) The plea of not guilty puts in issue every material allegation of the indictment, information or complaint.

Plea of guilty.

95-1902. **Plea of Guilty.** Before or during trial a plea of guilty may be accepted when:

(a) the defendant enters a plea of guilty in open court; and

(b) the court has informed the defendant of the consequences of his plea and of the maximum penalty provided by law which may be imposed upon acceptance of such plea.

(c) At any time before or after judgment the court may for good cause shown permit the plea of guilty to be withdrawn and a plea of not guilty substituted.

Failure of county attorney to attend.

95-1903. **Failure of the County Attorney to Attend.** If the county attorney fails to attend the trial, the court may appoint some attorney-at-law to perform his duties.

Presence of defendant, mistrial for absence.

95-1904. **Presence of Defendant; Mistrial for Absence.**

(a) The defendant must be personally present at the trial and rendition of judgment in all cases tried in the district court. If the defendant fails to appear at any time during the course of the trial and before the jury has retired for its deliberations or the case has been finally submitted to the judge, and if after the exercise of reasonable diligence, his presence cannot be procured, the court shall declare a mistrial and the cause may again be tried.

(b) In all cases appealed to the Supreme Court it shall be conclusively deemed that the defendant was present in court at all stages of the trial unless the record on appeal affirmatively shows to the contrary; in all cases appealed to the Supreme Court it shall be conclusively deemed that the court or judge gave the proper admonition in accordance with the provision of section 95-1913(e) unless the record affirmatively shows to the contrary.

Formation of trial jury.

95-1905. **Formation of Trial Jury.** Trial juries for criminal actions are formed in the same manner as trial juries in civil actions, except that the total number of jurors drawn shall be at least twelve plus the total number of peremptory challenges.

Order of prosecutions.

95-1906. **Order of Prosecutions.** Prosecutions against defendants held in custody must be disposed of in advance of prosecution against defendants on bail unless for good cause the court shall direct an action to be tried out of its order.

Time to prepare for trial.

95-1907. **Time to Prepare for Trial.** After plea, the defendant shall be entitled to a reasonable time to prepare for trial.

Motion to discharge jury panel.

95-1908. **Motion to Discharge Jury Panel.**

(a) Any objection to the manner in which a jury panel has been selected or drawn shall be raised by a motion to discharge the jury panel. The motion shall be made at least five days prior to the term for which the jury is drawn. For good cause shown, the court may entertain the motion at any time thereafter.

(b) The motion shall be in writing supported by affidavit and shall state facts which show that the jury panel was improperly selected or drawn.

(c) If the motion states facts which show that the jury panel has been improperly selected or drawn, it shall be the duty of the court to conduct a hearing. The burden of proof shall be on the movant.

(d) If the court finds that the jury panel was improperly selected or drawn, the court shall order the jury panel discharged and the selection or drawing of a new panel in the manner provided by law.

Trial jurors.

95-1909. **Trial Jurors.**

(a) The clerk of court shall make available to the parties a list of prospective jurors with their addresses when drawn.

Qualifications.

(b) (1) The qualifications of jurors, and who will be exempted, are found in sections 93-1301 through 93-1307, of the civil code, which by reference are made a part of this code.

(2) An exemption from service on a jury is not a cause of challenge, but the privilege of the person exempted.

(c) The county attorney and the defendant or his attorney shall conduct the examination of prospective jurors. The court may conduct an additional examination. The court may limit the examination by the defendant, his attorney or the prosecuting attorney if the court believes such examination to be improper.

(d) (1) Each party may challenge jurors for cause, and each challenge must be tried by the court.

Challenge for cause.

(2) A challenge for cause may be taken for all or any of the following reasons; or for any other reason which the court determines:

(i) Consanguinity or relationship to the person alleged to be injured by the offense charged, or on whose complaint the prosecution was instituted, or to the defendant.

(ii) Standing in the relation of guardian and ward, attorney and client, master and servant, or landlord and tenant, debtor and creditor, or being a member of the family of the defendant, or of the person alleged to be injured by the offense charged, or on whose complaint the prosecution was instituted, or in his employment.

(iii) Being a party adverse to the defendant in a civil action, or having complained against or been accused by him in a criminal prosecution.

(iv) Having served on the grand jury which found the indictment, or on a coroner's jury which inquired into the death of a person whose death is the subject of the indictment or information.

(v) Having served on a trial jury which has tried another person for the offense charged.

(vi) Having been one of a jury formerly sworn to try the same charge, and whose verdict was set aside or which was discharged without verdict, after the case was submitted to it.

(vii) Having served as a juror in a civil action brought against the defendant for the act charged as an offense.

(viii) If the offense charged be punishable with death, the entertaining of such conscientious opinions as would preclude his finding the defendant guilty; in which case he must neither be permitted nor compelled to serve as a juror.

(ix) Having a belief that the punishment fixed by law is too severe for the offense charged.

(x) For the existence of a state of mind on the part of the juror in reference to the case, or to either of the parties, which will prevent him from acting with entire impartiality and without prejudice to the substantial rights of either party.

(e) All challenges must be interposed before the jury is sworn, unless the cause of challenge be discovered after the jury is sworn and before the introduction of any evidence, when the court, in its discretion may allow the challenge to be interposed.

Peremptory challenges.

(f) Each defendant shall be allowed eight (8) peremptory challenges in capital cases, six (6) in all other cases tried in the district court, and three (3) in all cases tried in justice of the peace or police courts. However, there may not be additional challenges for separate counts charged in the indictment or information. If the indictment or information charges a capital offense, as well as

lesser offenses in separate counts, the maximum number of challenges shall be eight (8). The state shall be allowed the same number of peremptory challenges as all of the defendants.

Alternate jurors.

(g) After the jury is impaneled and sworn, the court may direct the selection of one or more alternate jurors, in the same manner as principal jurors, who shall take the same oath as the principal jurors. Each party shall have one additional peremptory challenge for each alternate juror. Alternate jurors in the order in which they are called shall replace jurors who, prior to the time the jury arrives at its verdict, become unable or disqualified to perform their duties. An alternate juror shall not join the jury in its deliberation unless called upon by the court to replace a member of the jury. His conduct during the period in which the jury is considering its verdict shall be regulated by instructions of the trial court. An alternate juror who does not replace a principal juror shall be discharged after the jury arrives at its verdict.

Verdict.

(h) The jury shall return a general verdict to each offense charged.

Motion to dismiss.

(i) When, at the close of the state's evidence or at the close of all the evidence, the evidence is insufficient to support a finding or verdict of guilty, the court may on its own motion or on the motion of the defendant, dismiss the action and discharge the defendant. However, the court may allow the case to be reopened for good cause shown.

Order of trial.

95-1910. **Order of Trial.**

(a) The court may instruct the jury as to its duties. Such general instructions must be settled in the same manner as provided for the settlement of special instructions in subdivision (d) hereof.

(b) The county attorney must state the case and offer evidence in support of the prosecution. The defendant may make his opening statement prior to the state's offer of evidence, or may state his defense and then offer evidence in support thereof after the state rests.

(c) The parties may then respectively offer rebutting testimony only, unless the court, for good cause, permits them to offer evidence upon their original case.

Instructions.

(d) When the evidence is concluded, if either party desires special instructions to be given to the jury, such instructions shall be reduced to writing, numbered, and signed by the party, or his attorney, and delivered to the court. The instructions shall be settled by the court, without the presence of the jury, at which settlement counsel for the parties, or the defendant if he is without counsel, shall be allowed reasonable opportunity to examine the instructions requested and proposed to be given by the court, and to present and argue to the court objections to the adoption or rejection of any instruction offered by counsel or proposed to be given to the jury by the court. On such settlement of instructions, the respective counsel, or the parties, shall specify and state the particular ground on which an instruction is objected to, and it shall not be sufficient to object generally that the instruction does not state the law, or is against the law, but the objection must specify particularly wherein the instruction is insufficient, or does not state the law, or what particular clause therein is objected to.

The court shall pass upon the objections to the instructions and shall either give each instruction as requested or proposed or positively refuse to do so, or give the instruction with modification, and shall mark or endorse upon each instruction in such a manner that it shall distinctly appear what instructions were given in whole or in part, and in like manner those refused or modified, and if modified, wherein and how modified. All instructions must be filed as a part of the record of the cause. No exceptions are necessary to the rulings of the court on the settlement of instructions.

The court reporter shall be present at such settlement and shall take down all the objections to any or all of the instructions given or refused by the court, together with modifications made therein, and the ruling of the court thereon.

(e) When the instructions have been passed upon and settled by the court, and before the arguments to the jury have begun, the court shall charge the jury in writing, giving in such charge only such instructions as have been passed upon and settled. In charging the jury, the court shall give them all matters of law which it thinks necessary for the jury's information in rendering a verdict.

(f) When the jury has been charged, unless the case is submitted to the jury on either side or on both sides without argument, the county attorney must commence and may conclude the argument. If several defendants having several defenses appear by different counsel, the court must determine their relative order in evidence and argument. Counsel, in arguing the case to the judge, may argue and comment upon the law of the case as given in the instructions of the court, as well as upon the evidence of the case.

When order of trial may be departed.

95-1911. **When Order of Trial May Be Departed From.** When the state of the pleading requires it, or in any other case, for good reasons, and in the discretion of the court, the order prescribed in the last section may be departed from.

View of place of offense or property.

95-1912. **View of Place of Offense or Property.** When the court deems it proper that the jury view any place or personal property pertinent to the case, it will order the jury to be conducted in a body under the custody of the sheriff or bailiff, to view said place or personal property in the presence of the defendant and his counsel. The place or personal property will be shown them by a person appointed by the court for that purpose, and they may personally inspect the same. The sheriff or bailiff must be sworn to suffer no person to speak or otherwise communicate with the jury nor to do so himself on any subject connected with the trial, and to return them into the courtroom without unnecessary delay or at a specified time as the court may direct.

Conduct of jury after submission of case.

95-1913. **Conduct of Jury After Submission of Case.**

(a) **Jurors, Separation of During Trial.** The jurors sworn to try an action may, at any time before the submission of the case, in the discretion of the court, be permitted to separate or be kept in charge of a proper officer. The officer must be sworn to keep the jurors together until the next meeting of the court, to suffer no person to speak to them or communicate with them, nor to do so himself, on any subject connected with the trial, and to return them into court at the next meeting thereof.

(b) **Retirement of Jury.** When the jury retires to consider its verdict an officer of the court shall be ap-

pointed to keep them together and to prevent conversations between the jurors and others.

(c) **Items Which May Be Taken in the Jury Room.** Upon retiring for deliberation, the jury may take with them all papers which have been received as evidence in the cause, except depositions or copies of such papers as ought not, in the opinion of the court, to be taken from the person having them in his possession. The jury may also take with them any exhibits which the court may deem proper, and notes of the proceedings taken by themselves.

(d) **After Retirement, May Return into Court for Information.** After the jury has retired for deliberation, if there be an disagreement among them as to the testimony, or if they desire to be informed on any point of law arising in the cause, they must require the officer to conduct them into court. Upon being brought into court, the information requested may be given in the discretion of the court; if such information is given it must be given in the presence of the county attorney and the defendant and his counsel.

(e) **Admonition.** The jury must also, at each adjournment of the court, whether permitted to separate or kept in charge of officers, be admonished by the court that it is their duty not to converse among themselves or with anyone else on any subject connected with the trial, or to form or express any opinion thereon until the cause is finally submitted to them.

Court may adjourn during absence, but deemed open.

95-1914. **Court May Adjourn During Absence, But Deemed Open.** While the jury is absent the court may adjourn from time to time as to other business, but it must nevertheless be open for every purpose connected with the cause submitted to the jury until a verdict is returned or the jury discharged.

Verdict.

95-1915. **Verdict.**

(a) **Return.** The verdict shall be unanimous in all felonies and two-thirds (⅔) in all misdemeanors and appeals from justice or police courts. Such verdict shall be signed by the foreman and returned by the jury to the judge in open court.

(b) **Several Defendants.** If there are two or more defendants, the jury, at any time during its deliberations,

may return a verdict or verdicts with respect to a defendant or defendants as to whom it has agreed; if the jury cannot agree with respect to all, the defendant or defendants as to whom it does not agree may be tried again.

(c) **Conviction of a Lesser Offense.** The defendant may be found guilty of an offense necessarily included in the offense charged, or of an attempt to commit either the offense charged or an offense necessarily included therein if the attempt is an offense.

(d) **Poll of Jury.** When a verdict is returned, the jury shall be polled at the request of any party or upon the court's own motion. If upon the poll there is not the required concurrence the jury may be directed to retire for further deliberations or may be discharged.

Defendant, when to be discharged.

95-1916. **Defendant, When to Be Discharged.** If judgment of acquittal is given on a general verdict, and the defendant is not detained for any other legal cause, he must be discharged as soon as the judgment is given, except where the acquittal is because of a variance between the pleading and proof which may be obviated by a new indictment or information the court may order his detention to the end that a new indictment or information may be filed by the county attorney.

Justice and police court proceedings.

CHAPTER 20.

JUSTICE AND POLICE COURT PROCEEDINGS.

Initiation of proceedings.

95-2001. **Initiation of Proceedings.** In justice and police courts all criminal prosecutions must be commenced by complaint under oath.

Minutes.

95-2002. **Minutes.** A docket must be kept by the justice of the peace, or police judge, in which must be entered each action, and the proceedings of the court therein.

Change of place of trial.

95-2003. **Change of Place of Trial.**

(a) The defendant or prosecution, before trial, may move for a change of place of trial on the ground that there exists in the township in which the charge is pending such prejudice that a fair trial cannot be had in such township.

(b) The motion shall be in writing and supported by affidavit which shall state facts showing the nature of

the prejudice alleged. The defendant or the state may file counter-affidavits. The court shall conduct a hearing and determine the merits of the motion.

(c) If the court determines that there exists in the township where the prosecution is pending such prejudice that a fair trial cannot be had it shall transfer the cause to any other court of competent jurisdiction in any township where a fair trial may be had.

Trial in justice and police courts.

95-2004. **Trial in Justice and Police Courts.**

(a) **Method of Trial:**

(1) The defendant is entitled to a jury of six qualified persons, but may consent to a lesser number.

(2) A trial by jury may be waived by the consent of both parties expressed in open court and entered in the docket.

(3) Questions of law shall be decided by the court and questions of fact by the jury except when a jury trial is waived, then the court shall determine both questions of law and of fact.

(b) **Plea of Guilty.** Before or during trial a plea of guilty may be accepted when:

(1) The defendant enters a plea of guilty in open court, and

(2) The court has informed the defendant of the consequences of his plea and of the maximum penalty provided by law which may be imposed upon acceptance of such plea.

(c) **Presence of Defendant.** The trial may be had in the absence of the defendant; but if his presence is necessary for any purpose, the court may require the personal attendance of the defendant at the trial.

(d) **Time to Prepare for Trial.** After plea the defendant shall be entitled to a reasonable time to prepare for trial.

Formation of trial jury.

95-2005. **Formation of Trial Jury.**

(a) **Number of Jurors.** A jury in justice or police court shall consist of six persons, but the parties may agree to a number less than six.

(b) **Formation of Trial Jury.** In January of each year each justice of the peace and each police judge shall select at least fifty (50) names from the jury list which is filed in the office of the clerk of the district court. The list of names selected shall be posted in a public place and shall comprise the trial jury list for the ensuing year.

Trial jurors shall be summoned from the jury list by notifying each orally that he is summoned and of the time and place at which his attendance is required.

The judge shall question all trial jurors summoned for the trial of a case and shall determine if any of them may be challenged for any cause enumerated in section 95-1909(d) (2) of this code. All challenges for cause shall be made by the judge. After the judge has completed his examination of the jury panel, each defendant shall be allowed three (3) peremptory challenges and the state shall be allowed the same number of peremptory challenges as all of the defendants.

Verdict.

95-2006. **Verdict.**

(a) **Return.** The verdict of the jury must in all cases be general. It shall be returned by the jury to the judge in open court, who must enter, or cause it to be entered in the minutes. Two-thirds in number of the jury may render a verdict, and such verdict so rendered shall have the same force and effect as if all jurors had concurred therein.

(b) **Several Defendants.** When several defendants are tried together, if the jury cannot agree upon a verdict as to all, they may render a verdict as to those in regard to whom they do agree, on which a judgment must be entered accordingly, and the case as to the rest may be tried by another jury.

(c) **Poll of Jury.** When a verdict is returned, the jury shall be polled at the request of any party or upon the court's own motion. If upon the poll there is not a two-thirds concurrence, the jury may be directed to retire for further deliberations or may be discharged.

(d) **Discharge of Jury.** The jury cannot be discharged after the cause is submitted to them, until they have agreed upon and rendered their verdict, unless for good cause the court sooner discharges them.

95-2007. **Sentence and Judgment.**

Sentence and judgment.

(a) If a judgment of acquittal is rendered the defendant must be immediately discharged.

(b) After a plea or verdict of guilty, or after a judgment against the defendant, the court must designate a time for sentencing, which must be within a reasonable time after the verdict or judgment is rendered. The sentence must be entered in the minutes of the court as soon as it is imposed.

(c) If the defendant pleads guilty, or is convicted either by the court or by a jury, the court must impose a sentence of fine or imprisonment or both, as the case may be.

(d) The determination and imposition of sentence shall be the exclusive duty of the court.

95-2008. **Execution of Judgment.**

Execution of judgment.

(a) The judgment must be executed by the sheriff, constable, marshal or policeman of the jurisdiction in which the conviction was had.

(b) When a judgment of imprisonment is entered, a certified copy thereof must be delivered to the sheriff or other officer, which is a sufficient warrant for its execution.

(c) If a judgment is rendered imposing a fine only, without imprisonment for nonpayment, and the defendant is not detained for any other legal cause, he must be discharged as soon as the judgment is given.

A judgment that the defendant pay a fine may also direct that he be imprisoned until the fine be satisfied, in the proportion of one day's imprisonment for every ten dollars ($10.00) of the fine.

When such a judgment is rendered the defendant must be held in custody the time specified in the judgment, unless the fine is sooner paid.

(d) Any officer charged with the collection of fines, under the provisions of this chapter, must return the execution to the judge within thirty days from its delivery to him, and pay over to the judge the money collected therefrom, deducting his fees for the collection.

All fines imposed and collected by a justice or police court must be paid to the treasurer of the county, city or town as the case may be, within thirty days after the receipt of the same, and the justice or police judge must take duplicate receipts therefor, one of which he must deposit with the county or city or town clerk as the case may be.

Appeal.

95-2009. **Appeal.**

(a) All cases on appeal from justices' or police courts must be tried anew in the district court and may be tried before a jury of six (6) which may be drawn from either the regular panel or jury box No. 3.

(b) The defendant may appeal to the district court by giving written notice of his intention to appeal within ten days after judgment.

(c) Within thirty (30) days the entire record of the justice or police court proceedings shall be transferred to the district court or the appeal shall be dismissed. It shall be the duty of the defendant to perfect the appeal.

Post-trial motions.

CHAPTER 21. POST-TRIAL MOTIONS.

New trial.

95-2101. **New Trial.**

(a) **Definition and Effect.** A new trial is a re-examination of the issue in the same court, before another jury, after a verdict or finding has been rendered and the granting of a new trial places the parties in the same position as if there had been no trial.

(b) **Motion for a New Trial.**

(1) Following a verdict or finding of guilty the court may grant the defendant a new trial if required in the interest of justice.

(2) The motion for a new trial shall be in writing and shall be filed by the defendant within thirty days following a verdict or finding of guilty. Reasonable notice of the motion shall be served upon the state.

(3) The motion for a new trial shall specify the grounds therefor.

(c) **Alternative Authority of the Court on Hearing Motion for New Trial.** On hearing the motion for a new

trial, if justified by law and the weight of the evidence, the court may:

1. Deny the motion,

2. Grant a new trial, or

3. Modify or change the verdict or finding by finding the defendant guilty of a lesser degree of the crime charged, finding the defendant guilty of a lesser included crime or finding the defendant not guilty.

Sentence and judgment.

CHAPTER 22. SENTENCE AND JUDGMENT.

Liberal construction.

95-2201. **Liberal Construction.** This chapter shall be liberally construed to the end that persons convicted of a crime shall be dealt with in accordance with their individual characteristics, circumstances, needs, and potentialities; that dangerous offenders shall be correctively treated in custody for long terms as needed; and that other offenders shall be dealt with by probation, suspended sentence, or fine whenever such disposition appears practicable and not detrimental to the needs of public safety and the welfare of the individual.

Sentence and judgment.

95-2202. **Sentence and Judgment.**

(a) The judgment shall be rendered in open court.

(b) If the verdict or finding is not guilty judgment shall be rendered immediately and the defendant shall be discharged from custody or from the obligation of his bail bond.

(c) If the verdict or finding is guilty sentence shall be pronounced and judgment rendered within a reasonable time.

Presentence investigations.

95-2203. **Presentence Investigations.** No defendant convicted of a crime which may result in commitment for one year or more in the state prison, shall be sentenced or otherwise disposed of before a written report of investigation by a probation officer is presented to and considered by the court, unless the court deems such report unnecessary. The court may, in its discretion, order a presentence investigation for a defendant convicted of any lesser crime or offense.

Content of investigation.

95-2204. **Content of Investigation.** Whenever an investigation is required, the probation officer shall

promptly inquire into the characteristics, circumstances, needs, and potentialities of the defendant; his criminal record and social history; the circumstances of the offense; the time the defendant has been in detention; and the harm to the victim, his immediate family, and the community. All local and state mental and correctional institutions, courts, and police agencies shall furnish the probation officer on request the defendant's criminal record and other relevant information. The investigation shall include a physical and mental examination of the defendant when it is desirable in the opinion of the court.

Availability of report to defendant and others.

95-2205. **Availability of the Report to Defendant and Others.** The judge may, in his discretion, make the investigation report or parts of it available to the defendants or others, while concealing the identity of persons who provided confidential information. If the court discloses the identity of persons who provided information, the judge may, in his discretion, allow the defendant to cross-examine those who rendered information. Such reports shall be part of the record but shall be sealed and opened only on order of the court.

If a defendant is committed to a state institution the investigation report shall be sent to the institution at the time of commitment.

Sentence.

95-2206. **Sentence.** Whenever any person has been found guilty of a crime or offense upon a verdict or plea the court may impose any of the following sentences:

(1) Release the defendant on probation;

(2) Defer the imposition of sentence for a period not to exceed three (3) years;

(3) Suspend the execution of the sentence up to the maximum sentence allowed for the particular offense. However, if any restrictions or conditions are violated, any elapsed time shall not be a credit against the sentence, unless the court shall otherwise order.

(4) Impose a fine as provided by law for the offense;

(5) Commit the defendant to a correctional institution with or without a fine as provided by law for the offense;

(6) Impose any combination of the above. The court may also impose any restrictions or conditions on the above sentences which it deems necessary.

Any judge who has suspended the execution of a sentence or deferred the imposition of a sentence of imprisonment under this section, or his successor, is authorized thereafter, in his discretion, during the period of such suspended sentence or deferred imposition of sentence to revoke such suspension or impose sentence and order such person committed, or may, in his discretion, order the prisoner placed under the jurisdiction of the state board of pardons as provided by law, or retain such jurisdiction with his court. Prior to the revocation of an order suspending or deferring the imposition of sentence, the person affected shall be given a hearing.

Withdrawal of plea on deferred imposition.

95-2207. **Withdrawal of Plea on a Deferred Imposition.** Whenever the court has deferred the imposition of sentence, and after termination of the time period during which imposition of sentence has been deferred upon motion of the court, the defendant or the defendant's attorney, the court may allow the defendant to withdraw his plea of guilty, or may strike the verdict of guilty from the record, and order that the charge or charges against him be dismissed.

Judgment to pay fine constitutes a lien.

95-2208. **Judgment to Pay Fine Constitutes a Lien.** The judgment shall be reduced to writing and signed by the judge. A judgment that the defendant pay a fine or costs constitutes a lien upon the real estate of the defendant, which lien dates from the date of the defendant's arrest.

Entry of judgment and judgment roll.

95-2209. **Entry of Judgment and Judgment Roll.** When judgment upon a conviction is rendered the clerk must enter the same in the minutes, stating briefly the offense for which the conviction was had, and the fact of prior convictions (if any), and must, within five days, annex together and file the following papers, which will constitute the judgment roll:

(1) The indictment or information and a copy of the minutes of the arraignment, pleas and motions.

(2) A copy of the minutes of the trial.

(3) The instructions given or refused and the indorsements thereon.

(4) A copy of the judgment.

Information from courts.

95-2210. **Information From Courts.** It shall be the duty of the court disposing of any criminal case to cause to be transmitted to the board of pardons statistical data in accordance with regulations issued by the board regarding all dispositions of defendants whether found guilty or discharged.

Review of sentence.

95-2211. **Review of Sentence.** Every sentence shall be subject to review in accordance with Chapter 25, Review of Sentence.

Sentence to be imposed by judge.

95-2212. **Sentence to Be Imposed by Judge.** All sentences under this chapter shall be imposed exclusively by the judge of the court.

Merger of sentences.

95-2213. **Merger of Sentences.** Unless the judge otherwise orders,

(a) when a person serving a term of commitment imposed by a court in this state is committed for another offense, the shorter term or shorter remaining term shall be merged in the other term, and

(b) when a person under suspended sentence or on probation or parole for an offense committed in this state is sentenced for another offense, the period still to be served on suspended sentence, probation, or parole shall be merged in any new sentence of commitment or probation.

(c) The court merging the sentences shall forthwith furnish each of the other courts and penal institutions in which the defendant is confined under sentence with authenticated copies of its sentence, which shall cite the sentences being merged.

(d) If an unexpired sentence is merged pursuant to section (a), the court which imposed such sentence shall modify it in accordance with the effect of the merger.

(e) Separate sentences of two or more crimes shall run concurrently unless the court otherwise orders.

Credit for time served.

95-2214. **Credit for Time Served.** Where defendant has served any portion of his sentence under a commitment based upon a judgment which judgment is subsequently declared invalid or which is modified during the term of imprisonment, such time shall be credited upon

any subsequent sentence he may receive upon a new commitment for the same criminal act or acts. In calculating the time imprisoned, the person so convicted shall have the credit for all the time earned in diminution of sentence as provided under Montana statutes, section 80-1905, unless the sentencing authority in its discretion may choose to deny such credit.

Credit for incarceration prior to conviction.

95-2215. **Credit for Incarceration Prior to Conviction.**

(a) Any person incarcerated on a bailable offense and against whom a judgment of imprisonment is rendered shall be allowed credit for each day of incarceration prior to or after conviction except that in no case shall the time allowed as a credit exceed the term of the prison sentence rendered.

(b) Any person incarcerated on a bailable offense who does not supply bail and against whom a fine is levied on conviction of such offense shall be allowed a credit of $10 for each day so incarcerated prior to conviction except that in no case shall the amount so allowed or credited exceed the amount of the fine.

Jail work release program.

95-2216. **Jail Work Release Program.**

(a) A court, after having sentenced a person to confinement in a county jail, may, in its discretion, upon request of the county attorney and sheriff of such county, and with the consent of the convicted person, order that any part of the imprisonment so imposed be served in confinement, with parole during the hours or periods the convicted person is actually employed.

(b) Upon the issuance of such an order under this act, the sheriff shall arrange for the convicted person to continue his regular employment without interruption insofar as is reasonably possible; provided, however, that said prisoner shall be confined in the county jail during the hours when he is not employed.

(c) The earnings of the prisoner shall be collected by the sheriff. From such earnings, the sheriff shall pay the prisoner's board and personal expenses, both inside and outside the jail and, to the extent directed by the court, pay the support of his dependents, if any, and any balance shall be retained until his discharge.

(d) The committing court may, in its discretion, upon request of the county attorney and sheriff of such county,

reduce the sentence of the prisoner up to one-fourth of the full term, if, in the opinion of the court, the prisoner's conduct, diligence and general attitude merit such diminution.

(e) In cases where the convicted person violates the conditions of said sentence, he shall be returned to the court; the court may then require that the balance of his sentence be spent in full confinement and, further, the court may cancel any diminution of sentence granted under this act.

(f) The court may, by order, authorize the sheriff of the sentencing county to arrange with a sheriff of any other county within the State of Montana, to have the convicted person transferred to the other county where it appears the convicted person can continue his regular employment in the latter county; provided, however, when such transfer has been made to another county, the sheriff of the sentencing county shall still collect all moneys earned by the convicted person, and shall dispose of said moneys as provided by subsection (e) of this section.

CHAPTER 23. EXECUTION OF SENTENCE.

Execution of sentence.

Commitment of defendant.

95-2301. **Commitment of defendant.** Upon rendition of judgment after pronouncement of a sentence imposing punishment of imprisonment or death the court shall commit the defendant to the custody of the sheriff who shall deliver the defendant to the place of his confinement or execution.

Execution of a fine.

95-2302. **Execution of a fine.**

(a) If the judgment is for a fine alone, execution may issue thereon as on a judgment in a civil case.

(b) If the judgment is for a fine and imprisonment until fine be paid, the defendant must be committed to the custody of the proper officer, and by him detained until the judgment is complied with. The imprisonment must not exceed one day for every $10 of the fine.

Execution of death.

95-2303. **Execution of death.**

(a) The punishment of death must be inflicted by hanging the defendant by the neck until he is dead.

(b) In pronouncing the sentence of death, the court shall set the date of execution which must not be less than thirty nor more than sixty days from the date the sentence is pronounced.

(c) A sentence of death must be executed within the walls or yard of a jail or some convenient private place in the county where the trial took place.

(d) The sheriff of the county must be present and shall supervise such execution which shall be conducted in the presence of a physician, the county attorney of the county, and at least 12 reputable citizens to be selected by the sheriff. The sheriff shall at the request of the defendant, permit such priests or ministers, not exceeding two, as the defendant may name and only persons, relatives or friends, not to exceed five, to be present at the execution, together with such peace officers as he may think expedient, to witness the execution. No other persons than those mentioned in this subsection can be present at the execution, nor can any person under age be allowed to witness the same.

(e) After the execution, the sheriff must make a return upon the death warrant, showing time, mode and manner in which it was executed.

Lack of mental fitness of defendant.

95-2304. **Lack of Mental Fitness of the Defendant.** If, after judgment of death, there is good reason to suppose than the defendant lacks mental fitness, the mental fitness of the defendant will be determined in accordance with the provisions of Chapter 5, Competency of the Accused.

Proceedings upon finding of lack of mental fitness.

95-2305. **Proceedings upon finding of lack of mental fitness.** If it is found that defendant is mentally fit as provided in section 95-2304, the sheriff must execute the judgment; but if it is found that he lacks fitness, the execution of judgment must be suspended and the court shall commit him to the custody of the superintendent of the Montana state hospital, to be placed in an appropriate institution of the state department of public institutions for so long as such lack of fitness shall endure. When the court, on its own motion or upon application of the superintendent of the Montana state hospital, or the county prosecuting officer, or the defendant or his legal representative, determines after a hearing if a hearing is requested, that the defendant has regained fitness to proceed, the sheriff shall be directed by the court to carry

out the execution. If, however, the court is of the view that so much time has elapsed since the commitment of the defendant, that it would be unjust to proceed with execution of the sentence, the court may suspend the execution of the sentence and may order the defendant to be discharged.

Proceedings when female is claimed to be pregnant.

95-2306. **Proceedings when female is claimed to be pregnant.** If there is good reason to suppose a woman against whom a judgment of death is rendered is pregnant, the sheriff of the county, with the concurrence of the judge of the court by which the judgment was rendered, must summon a jury of three physicians to inquire into the supposed pregnancy. Immediate notice of this inquiry must be given to the county attorney of the county who must attend the inquiry and may produce his own witnesses.

Proceedings upon finding of pregnancy.

95-2307. **Proceedings upon the finding of pregnancy.** If it is found by the inquiry that the woman is not pregnant, the sheriff must execute the judgment; if it is found that the woman is pregnant, the sheriff must suspend the execution of judgment, and transmit the inquisition to the governor. When the governor is satisfied that the woman is no longer pregnant, he may issue his warrant appointing a day for the execution of the judgment.

Western Interstate Corrections Compact—contents.

95-2308. **Western interstate corrections compact—contents.** The western interstate corrections compact as contained herein is hereby enacted into law and entered into on behalf of this state with any and all other states legally joining therein in a form substantially as follows:

Purpose and policy.

1. **Purpose and policy** The party states, desiring by common action to improve their institutional facilities and provide programs of sufficiently high quality for the confinement, treatment and rehabilitation of various types of offenders, declare that it is the policy of each of the party states to provide such facilities and programs on a basis of cooperation with one another, thereby serving the best interests of such offenders and of society. The purpose of this compact is to provide for the development and execution of such programs of cooperation for the confinement, treatment and rehabilitation of offenders.

Definitions.

2. **Definitions.** As used in this compact, unless the context clearly requires otherwise:

"State."

(a) "State" means a state of the United States, or subject to the limitation contained in subsection 7, Guam.

"Sending state."

(b) "Sending state" means a state party to this compact in which conviction was had.

"Receiving state."

(c) "Receiving state" means a state party to this compact to which an inmate is sent for confinement other than a state in which conviction was had.

"Inmate."

(d) "Inmate" means a male or female offender who is under sentence to or confined in a prison or other correctional institution.

"Institution."

(e) "Institution" means any prison, reformatory or other correctional facility (including but not limited to a facility for the mentally ill or mentally defective) in which inmates may lawfully be confined.

Contracts.

3. **Contracts.**

To provide for.

(a) Each party state may make one or more contracts with any one or more of the other party states for the confinement of inmates on behalf of a sending state in institutions situated within receiving states. Any such contract shall provide for:

(i) Its duration.

(ii) Payments to be made to the receiving state by the sending state for inmate maintenance, extraordinary medical and dental expenses, and any participation in or receipt by inmates of rehabilitative or correctional services, facilities, programs or treatment not reasonably included as part of normal maintenance.

(iii) Participation in programs of inmate employment, if any; the disposition or crediting of any payments received by inmates on account thereof; and the crediting of proceeds from or disposal of any products resulting therefrom.

(iv) Delivery and retaking of inmates.

(v) Such other matters as may be necessary and appropriate to fix the obligations, responsibilities and rights of the sending and receiving states.

(b) Prior to the construction or completion of construction of any institution or addition thereto by a party state, any other party state or states may contract there-

with for the enlargement of the planned capacity of the institution or addition thereto, or for the inclusion therein of particular equipment or structures, and for the reservation of a specific per centum of the capacity of the institution to be kept available for use by inmates of the sending state or states so contracting. Any sending state so contracting may, to the extent that moneys are legally available therefor, pay to the receiving state, a reasonable sum as consideration for such enlargement of capacity, or provision of equipment or structures, and reservation of capacity. Such payment may be in a lump sum or in installments as provided in the contract.

(c) The terms and provisions of this compact shall be a part of any contract entered into by the authority of or pursuant thereto, and nothing in any such contract shall be inconsistent therewith.

Procedures and rights.

4. **Procedures and rights.**

(a) Whenever the duly constituted judicial or administrative authorities in a state party to this compact, and which has entered into a contract pursuant to subsection 3, shall decide that confinement in, or transfer of an inmate to, an institution within the territory of another party state is necessary in order to provide adequate quarters and care or desirable in order to provide an appropriate program of rehabilitation or treatment, said officials may direct that the confinement be within an institution within the territory of said other party state, the receiving state to act in that regard solely as agent for the sending state.

(b) The appropriate officials of any state party to this compact shall have access, at all reasonable times, to any institution in which it has a contractual right to confine inmates for the purpose of inspecting the facilities thereof and visiting such of its inmates as may be confined in the institution.

(c) Inmates confined in an institution pursuant to the terms of this compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed therefrom for transfer to a prison or other institution within the sending state, for transfer to another institution in which the sending state may have a contractual or other right to confine inmates, for release on probation or parole, for discharge, or for any other purpose

permitted by the laws of the sending state; provided that the sending state shall continue to be obligated to such payments as may be required pursuant to the terms of any contract entered into under the terms of subsection 3.

(d) Each receiving state shall provide regular reports to each sending state on the inmates of that sending state in institutions pursuant to this compact including a conduct record of each inmate and certify said record to the official designated by the sending state, in order that each inmate may have the benefit or his or her record in determining and altering the disposition of said inmate in accordance with the law which may obtain in the sending state and in order that the same may be a source of information for the sending state.

(e) All inmates who may be confined in an institution pursuant to the provisions of this compact shall be treated in a reasonable and humane manner and shall be cared for and treated equally with such similar inmates of the receiving state as may be confined in the same institution. The fact of confinement in a receiving state shall not deprive any inmate so confined of any legal rights which said inmate would have had if confined in an appropriate institution of the sending state.

(f) Any hearing of hearings to which an inmate confined pursuant to this compact may be entitled by the laws of the sending state may be had before the appropriate authorities of the sending state, or of the receiving state if authorized by the sending state. The receiving state shall provide adequate facilities for such hearings as may be conducted by the appropriate officials of a sending state. In the event such hearing or hearings are had before officials of the receiving state, the governing law shall be that of the sending state and a record of the hearing or hearings as prescribed by the sending state shall be made. Said record together with any recommendations of the hearing officials shall be transmitted forthwith to the official or officials before whom the hearing would have been had if it had taken place in the sending state. In any and all proceedings had pursuant to the provisions of this subdivision, the officials of the receiving state shall act solely as agents of the sending state and no final determination shall be made in any matter except by the appropriate officials of the sending state.

(g) Any inmate confined pursuant to this compact shall be released within the territory of the sending state unless the inmate, and the sending and receiving states, shall agree upon release in some other place. The sending state shall bear the cost of such return to its territory.

(h) Any inmate confined pursuant to the terms of this compact shall have any and all rights to participate in and derive any benefits or incur or be relieved of any obligations or have such obligations modified or his status changed on account of any action or proceeding in which he could have participated if confined in any appropriate institution of the sending state located within such state.

(i) The parent, guardian, trustee, or other person or persons entitled under the laws of the sending state to act for, advise, or otherwise function with respect to any inmate shall not be deprived of or restricted in his exercise of any power in respect of any inmate confined pursuant to the terms of this compact.

Acts not reviewable in receiving state; extradition.

5. **Acts not reviewable in receiving state; extradition.**

(a) Any decision of the sending state in respect of any matter over which it retains jurisdiction pursuant to this compact shall be conclusive upon and not reviewable within the receiving state, but if at the time the sending state seeks to remove an inmate from an institution in the receiving state there is pending against the inmate within such state any criminal charge or if the inmate is suspected of having committed within such state a criminal offense, the inmate shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment or detention for such offense. The duly accredited officers of the sending state shall be permitted to transport inmates pursuant to this compact through any and all states party to this compact without interference.

(b) An inmate who escapes from an institution in which he is confined pursuant to this compact shall be deemed a fugitive from the sending state and from the state in which the institution is situated. In the case of an escape to a jurisdiction other than the sending or receiving state, the responsibility for institution of extradition proceedings shall be that of the sending state, but nothing contained herein shall be construed to prevent or affect the activities of officers and agencies of any

jurisdiction directed toward the apprehension and return of an escapee.

Federal aid.

6. **Federal aid.** Any state party to this compact may accept federal aid for use in connection with any institution or program, the use of which is or may be affected by this compact or any contract pursuant hereto and any inmate in a receiving state pursuant to this compact may participate in any such federally aided program or activity for which the sending and receiving states have made contractual provision provided that if such program or activity is not part of the customary correctional regimen the express consent of the appropriate official of the sending state shall be required therefor.

Entry into force.

7. **Entry into force.** This compact shall enter into force and become effective and binding upon the states so acting when it has been enacted into law by any two contiguous states from among the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nebraska, Nevada, New Mexico, Oregon, Utah, Washington and Wyoming. For the purposes of this article, Alaska and Hawaii shall be deemed contiguous to each other; to any and all of the states of California, Oregon and Washington; and to Guam. Thereafter, this compact shall enter into force and become effective and binding as to any other of said states, or any other state contiguous to at least one party state upon similar action by such state. Guam may become party to this compact by taking action similar to that provided for joinder by any other eligible party state and upon the consent of congress to such joinder. For the purposes of this article, Guam shall be deemed contiguous to Alaska, Hawaii, California, Oregon and Washington.

Withdrawal and termination.

8. **Withdrawal and termination.** This compact shall continue in force and remain binding upon a party state until it shall have enacted a statute repealing the same and providing for the sending of formal written notice of withdrawal from the compact to the appropriate officials of all other party states. An actual withdrawal shall not take effect until two years after the notices provided in state statute have been sent. Such withdrawal shall not relieve the withdrawing state from its obligations assumed hereunder prior to the effective date of withdrawal. Before the effective date of withdrawal, a withdrawing state shall remove to its territory, at its own expense, such in-

mates as it may have confined pursuant to the provisions of this compact.

Other arrangements unaffected.

9. **Other arrangements unaffected.** Nothing contained in this compact shall be construed to abrogate or impair any agreement or other arrangement which a party state may have with a nonparty state for the confinement, rehabilitation or treatment of inmates nor to repeal any other laws of a party state authorizing the making of cooperative institutional arrangements.

Construction and severability.

10. **Construction and Severability.** The provisions of this compact shall be liberally construed and shall be severable. If any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

Commitment or transfer of inmate to institution outside of state.

95-2309. **Commitment or transfer of inmate to institution outside of state.** Any court or state agency having power to commit or transfer an inmate (as defined in section 95-2308, subsection 2(d) of the western interstate corrections compact) to any institution for confinement may commit or transfer such inmate to any institution outside this state if this state has entered into a contract or contracts for the confinement of inmates in said institution pursuant to section 95-2308, subsection 3 of the western interstate corrections compact.

Effectuation of purposes of compact.

95-2310. **Effectuation of purposes of compact.** The courts, departments, agencies and officers of this state and its subdivisions shall enforce this compact and shall do all things appropriate to the effectuation of its purposes and intent which may be within their respective jurisdictions including but not limited to the making and submission of such reports as are required by the compact.

Hearings requested by other states—power of state to hold.

95-2311. **Hearings requested by other states—power of board of pardons and paroles and state department of**

institutions to hold. The board of pardons and paroles and the state department of institutions are hereby authorized and directed to hold such hearings as may be requested by any other party state pursuant to section 95-2308, subsection 4(f) of the western interstate corrections compact.

Governor—power to enter into contracts.

95-2312. **Governor—power to enter into contracts.** The governor is hereby empowered to enter into such contracts recommended by the department of institutions on behalf of this state as may be appropriate to implement the participation of this state in the western interstate corrections compact pursuant to section 95-2308 thereof.

Appeal by state and defendant.

CHAPTER 24.

APPEAL BY STATE AND DEFENDANT.

Application.

95-2401. **Application of chapter.**

(a) This chapter shall govern review in all criminal cases.

(b) All existing methods of review in criminal cases in the state are abolished. Hereafter the only method of review in criminal cases shall be by notice of appeal.

Suspension of rules.

95-2402. **Suspension of the rules.** In the interest of expediting decision upon any matter before it, or for other good cause shown, the supreme court may suspend the requirements or provisions of these rules on application of a party or on its own motion and may order proceedings in accordance with its direction.

Scope of appeal.

95-2403. **Scope of appeal.**

(a) Except as authorized by this code, the state may not appeal in a criminal case.

(b) The state may appeal from any court order or judgment the substantive effect of which results in:

(1) dismissing a case;

(2) modifying or changing the verdict as provided in section 95-2101(c)(3);

(3) granting a new trial;

(4) quashing an arrest or search warrant;

(5) suppressing evidence;

(6) suppressing a confession or admission; or

(7) granting or denying change of venue.

Scope of appeal —by defendant.

95-2404. **Scope of appeal, when may be taken by the defendant.**

(a) An appeal may be taken by the defendant only from a final judgment of conviction, and orders after judgment which affect the substantial rights of the defendant.

(b) Upon appeal from a judgment, the court may review the verdict or decision, and any order or decision objected to which involves the merits, or necessarily affects the judgment.

Procedure on appeal.

95-2405. **Procedure on appeal.**

(a) An appeal shall be taken by filing a notice of appeal in the court in which the judgment or order appealed from is entered or filed.

(b) **Content of the notice of appeal.** The notice of appeal shall specify the party or parties taking the appeal; and shall designate the judgment or order appealed from.

(c) **Service of notice of appeal.** The clerk of the district court shall serve notice of the filing of a notice of appeal by mailing a copy thereof to counsel of record of each party other than the appellant, or if a party is not represented by counsel, to the party at his last known address, and shall mail a copy of the notice of appeal to the clerk of the supreme court. The clerk of the district court shall note on each copy served the date on which the notice of appeal was filed. If an appellant is represented by counsel his counsel shall provide the clerk with sufficient copies of the notice of appeal to permit the clerk to comply with the requirements of this rule. Failure of the clerk to serve notice shall not affect the validity of the appeal. The notice shall be sufficient notwithstanding the death of a party or his counsel. The clerk shall note in the docket the names of the parties to whom he mails copies, with the date of mailing.

(d) The party appealing shall be known as the appellant and the adverse party as the respondent but the

title of the case shall not be changed in consequence of the appeal.

(e) An appeal from a judgment may be taken within 60 days after its rendition.

Stay of execution and relief pending appeal.

95-2406. **Stay of execution and relief pending appeal.**

(a) **Death.** If an appeal is taken a sentence of death shall be stayed by order of the trial court until final order by the supreme court.

(b) **Imprisonment.** If an appeal is taken and the defendant is admitted to bail, a sentence of imprisonment shall be stayed by the trial court.

(c) **Fine.** If an appeal is taken, a sentence to pay a fine, or a fine and costs, shall be stayed by the trial court or by the reviewing court.

(d) **Probation.** If an appeal is taken and the accused was admitted to probation, he shall remain on probation or post bail.

Effect on appeal by the state.

95-2407. **Effect of an appeal by the state.** An appeal taken by the state in no case stays or affects the operation of the judgment or order in favor of the defendant until judgment or order is reversed.

The record on appeal.

95-2408. **The record on appeal.**

Composition of record.

(a) **Composition of the Record on Appeal.** The original papers and exhibits filed in the district court, the transcript of proceedings, if any, and a certified copy of the docket entries prepared by the clerk of the district court shall constitute the record on appeal in all cases.

Transcript.

(b) **The Transcript of Proceedings; Duty of Appellant to Order, Notice to Respondent if Partial Transcript is Ordered; Cost of Producing.** Within 10 days after filing the notice of appeal the appellant shall order from the reporter a transcript of such parts of the proceedings not already on file as he deems necessary for inclusion in the record. In all cases where the appellant intends to urge insufficiency of the evidence to support the verdict, order or judgment in the district court, it shall be the duty of the appellant to order the entire transcript of the evidence. Wherever the sufficiency of the evidence to support a special verdict or answer by a jury to an interrogatory, or to support a specific finding of fact by the

trial court, is to be raised on the appeal by the appellant, he shall be under a duty to include in the transcript all evidence relevant to such verdict, answer or finding. Unless the entire transcript is to be included, the appellant shall, within the time above provided, file and serve on the respondent a description of the parts of the transcript which he intends to include in the record and a statement of the issues which he intends to present on the appeal. If the respondent deems a transcript of other parts of the proceedings to be necessary he shall within 10 days after such filing and service order such parts from the reporter or procure an order from the district court requiring the appellant to so do.

The cost of producing the transcript shall be paid by the appellant, or he shall make satisfactory arrangements with the reporter for the payment of such cost; but, if the appellant considers that any part of the record designated by the respondent for inclusion is unnecessary for the determination of the issues presented, he shall advise the respondent, and the district court may impose upon the respondent the cost of producing any part which it deems unnecessary for the determination of the issues.

The reporter shall certify the correctness of the transcript.

Statement of evidence.

(c) **Statement of the Evidence or Proceedings When No Report Was Made or When the Transcript is Unavailable.** If no report of the evidence or proceedings at a hearing or trial was made, or if a transcript is unavailable, the appellant may, within 10 days from the hearing or trial or such time extended as the district court may for good cause shown permit, prepare a statement of the evidence or proceedings from the best available means, including his recollection. The statement shall be served on the respondent, who may serve objections or propose amendments thereto within 10 days after service. Thereupon, the statement and any objections or proposed amendments shall be submitted for settlement and approval to the district judge who handled the proceedings, and as settled and approved shall be included by the clerk of the district court in the record on appeal. A judge may settle and approve such records after he ceases to be a judge. If such judge before the statement is settled and approved dies, is removed from office, becomes disqualified, is absent from the state, or refuses to settle

and approve the statement, it shall be settled and approved in such manner as the Supreme Court may direct.

Agreed statement.

(d) **Agreed Statement as the Record on Appeal.** In lieu of the record on appeal as defined in subdivision (a) of this rule, the parties may prepare and sign a statement of the case showing how the issues presented by the appeal arose and were decided in the district court and setting forth only so many of the facts averred and proved or sought to be proved as are essential to a decision of the issue presented. If the statement conforms to the truth, it, together with such additions as the court may consider necessary fully to present the issues raised by the appeal, shall be approved by the district court and shall then be certified to the Supreme Court as the record on appeal and transmitted thereto by the clerk of the district court within the time provided by Section 95-2409. Copies of the agreed statement may be filed as the appendix required by section 95-2418.

Correction or modification of record.

(e) **Correction or Modification of the Record.** If any difference arises as to whether the record truly discloses what occurred in the district court, the difference shall be submitted to and settled by that court and the record made to conform to the truth. If anything material to either party is omitted from the record by error or accident or is misstated therein, the parties by stipulation, or the district court, either before or after the record is transmitted to the Supreme Court, on proper suggestion or of its own initiative, may direct that the omission or misstatement be corrected, and if necessary that a supplemental record be certified and transmitted. All other questions as to the form and content of the record shall be presented to the Supreme Court.

Transmission of record.

95-2409. **Transmission of the Record.**

Time.

(a) **Time for Transmission; Duty of Appellant.** The record on appeal, including the transcript necessary for the determination of the appeal, shall be transmitted to the Supreme Court within 40 days after the filing of the notice of appeal unless the time is shortened or extended by an order entered under subdivision (c) of this section. Promptly after filing the notice of appeal the appellant shall comply with the provisions of section 95-2408(b) and shall take any other action necessary to enable the clerk to assemble and transmit the record. If more than

one appeal is filed, each appellant shall comply with the provisions of section 95-2408(b) and this subdivision, and a single record shall be transmitted within 40 days after the filing of the final notice of appeal.

Duty of clerk.

(b) **Duty of Clerk to Transmit the Record.** When the record is complete for purposes of the appeal, the clerk of the district court shall transmit it to the clerk of the Supreme Court. The clerk shall number the documents comprising the record and shall transmit with the record a numbered list of the documents, identifying each with reasonable definiteness. Documents in bulky containers and physical exhibits other than documents shall not be transmitted by the clerk unless he is directed to do so by a party or by the clerk of the Supreme Court. A party must make advance arrangements with the clerk of the district court for the transportation of bulky or weighty exhibits and with the clerk of the Supreme Court for their receipt. Transmission of the record is effected when the clerk of the district court mails or otherwise forwards the record to the Supreme Court. The clerk of the district court shall indicate, by endorsement on the face of the record or otherwise, the date upon which it is transmitted to the Supreme Court.

Extension of time.

(c) **Extension of Time for Transmission of the Record; Reduction of Time.** The district court may extend the time for transmitting the record. The request for extension must be made within the time originally prescribed or within an extension previously granted, and the district court shall not extend the time to a day more than 90 days from the date of filing of the first notice of appeal. If the district court is without authority to grant the relief sought or has denied a request therefor, the Supreme Court may on motion extend the time for transmitting the record or may permit the record to be transmitted and filed after the expiration of the time allowed or fixed. A motion for an extension of time for transmitting the record made in either court shall show that the inability of the appellant to cause timely transmission of the record is due to causes beyond his control or to circumstances which may be deemed excusable neglect. If a request for an extension of time for transmitting the record has been previously denied, the motion shall set forth the denial and shall state the reasons therefor, if any were given.

The district court or the Supreme Court may require the record to be transmitted and the appeal to be docketed at any time within the time otherwise fixed or allowed therefor.

Retention of record in district court.

(d) **Retention of the Record in the District Court by Order of Court.** The Supreme Court may provide by rule or order that a certified copy of the docket entries shall be transmitted in lieu of the entire record, subject to the right of any party to request at any time during the pendency of the appeal that designated parts of the record be transmitted.

If the record is required in the district court for use there pending the appeal, the district court may make an order to that effect, and the clerk of the district court shall retain the record and shall transmit a copy of the order and of the docket entries together with such parts as the parties may designate.

If the record is retained in the district court by order of either court, the clerk of the district court shall retain it subject to the order of the Supreme Court, and transmission of the copy of the docket entries shall constitute transmission of the record.

Stipulation to retention.

(e) **Stipulation of Parties that Parts of the Record Be Retained in the District Court.** The parties may agree by written stipulation filed in the district court that designated parts of the record shall be retained in the district court unless thereafter the Supreme Court shall order or any party shall request their transmittal. The parts thus designated shall nevertheless be a part of the record on appeal for all purposes.

Docketing of appeal—filing record.

95-2410. **Docketing the Appeal; Filing of the Record.**

(a) The clerk shall enter the appeal upon the docket at or before the time of filing the record. An appeal shall be docketed under the title given to the action in the district court with such addition as is necessary to indicate the identity of the appellant.

(b) **Filing of the Record.** Upon receipt of the record by the clerk of the Supreme Court following its timely transmittal, and after the appeal has been timely docketed, the clerk shall file the record without the necessity of a docketing fee. The clerk shall immediately give

notice to all parties of the date on which the record was filed.

(c) **Dismissal for Failure of Appellant to Cause Timely Transmission or to Docket Appeal.** If the appellant shall fail to cause timely transmission of the record, any respondent may file a motion in the Supreme Court to dismiss the appeal. The motion shall be supported by a certificate of the clerk of the district court showing the date and substance of the judgment or order from which the appeal was taken, the date on which the notice of appeal was filed, and the expiration date on which the notice of appeal was filed, and the expiration date of any order extending the time for transmitting the record; and by proof that 7 days' notice in writing has been served on the appellant that application will be made for dismissal of the appeal. Instead of filing a motion to dismiss the appeal, the respondent may cause the record to be transmitted and may docket the appeal, in which event the appeal shall proceed as if the appellant had caused it to be docketed.

Effect of dismissal.

95-2411. **Effect of Dismissal.** The dismissal of an appeal is in effect an affirmance of the judgment or order appealed from, unless the dismissal is expressly made without prejudice to another appeal.

Review of ruling against respondent.

95-2412. **Ruling Against Respondent May Be Reviewed.** Whenever the record on appeal shall contain any order, ruling, or proceeding of the trial court against the respondent, affecting his substantial rights on the appeal of said cause, together with any required objection of such respondent, the Supreme Court on such appeal shall consider such orders, rulings, or proceedings, and the objections thereto, and shall reverse or affirm the cause on said appeal according to the substantial rights of the respective parties, as shown upon the record. No cause shall be reversed by reason of any error committed by the trial court against the appellant, unless the record shows that the error was prejudicial.

Filing and service.

95-2413. **Filing and Service.**

(a) **Filing.** Papers required or permitted to be filed must be placed in the custody of the clerk within the time fixed for filing. Filing may be accomplished by mail addressed to the clerk, but filing shall not be timely unless the papers are actually received within the time

fixed for filing. If a motion requests relief which may be granted by a single judge the judge may permit the motion to be filed with him in which event he shall note thereon the dates of filing and shall thereafter transmit it to the clerk.

(b) **Service of all Papers Required.** Copies of all papers, including any transcript, filed by any party and not required by these rules to be served by the clerk shall, at or before the time of filing, be served by the party or person acting for him on all other parties to the appeal or review. Service on a party represented by counsel shall be made on counsel.

(c) **Manner of Service.** Service may be personal or by mail. Personal service includes delivery of the copy to a clerk or other responsible person at the office of counsel. Service by mail is complete on mailing.

(d) **Proof of Service.** Papers presented for filing shall contain acknowledgment of service by the person served or proof of service in the form of a statement of the date and manner of service and of the names of the persons served, certified by the person who made service. Proof of service may appear on or be affixed to the papers filed. The clerk may permit papers to be filed without acknowledgment of proof of service but shall require such to be filed promptly thereafter.

95-2414. **Computation and Extension of Time.** Computation and extension of time.

(a) **Computation of Time.** In computing any period of time prescribed by these Rules, by an order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period shall be included, unless it is a Saturday, Sunday or a legal holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

(b) **Additional Time After Service by Mail.** Whenever a party is required or permitted to do any act within a prescribed period after service of a paper upon him and the paper is served by mail, 3 days shall be added to the prescribed period.

95-2415. **Motions.** Unless another form is prescribed by these rules, an application for an order or other relief Motions.

shall be made by filing a motion in writing for such order or relief. The motion shall state with particularity the grounds therefor and shall set forth the order or relief sought. If a motion is supported by briefs, affidavits or other papers, they shall be served and filed with the motion. Motions for procedural orders may be determined ex parte. The Supreme Court may authorize disposition of motions for procedural orders by a single judge. If a motion seeks dismissal of the appeal or other substantial relief, any party may file an answer in opposition within 7 days after service of the motion, or within such time as the court may direct. Motions, supporting papers and any response thereto may be typewritten.

At the time of filing a motion counsel shall present a proposed order, together with sufficient copies for service upon all counsel of record.

Briefs.

95-2416. **Briefs.**

(a) **Brief of the Appellant.** The brief of the appellant shall contain under appropriate headings and in the order here indicated:

(1) A table of contents, with page references, and a table of cases (alphabetically arranged), statutes and other authorities cited, with references to the pages of the brief where they are cited.

(2) A statement of the issues presented for review.

(3) A statement of the case. The statement shall first indicate briefly the nature of the case and its disposition in the court below.

There shall follow a statement of the facts relevant to the issues presented for review, with references to the pages of the parts of the record at which material facts appear (see subdivision (e)).

(4) An argument. The argument may be preceded by a summary. The argument shall contain the contentions of the appellant with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes and pages of the record relied on.

(5) A short conclusion stating the precise relief sought.

(b) **Brief of the Respondent.** The brief of the respondent shall conform to the requirements of subdivision

(a) (1)-(4), except that a statement of the issues or of the case need not be made unless the respondent is dissatisfied with the statement of the appellant.

(c) **Reply Brief.** The appellant may file a brief in reply to the brief of the respondent. The reply brief must be confined to new matter raised in the brief of the respondent. No further briefs may be filed except with leave of court.

(d) **References in Briefs to Parties.** Counsel will be expected in their briefs and oral arguments to keep to a minimum references to parties by such formal designations as "appellant" and "respondent." It promotes clarity to use names or descriptive terms such as "accomplice," "decedent," etc.

(e) **References in Briefs to the Record.** When a reference is made in the briefs to the record, the reference must be to particular parts of the record, suitably designated, and to specific pages of each part, e.g., Answer, p.7; Motion for Suppression of Evidence, p.3; transcript, p.231. Intelligible abbreviations may be used. If reference is made to an exhibit, reference shall be made to the pages of the transcript on which the exhibit was identified, offered, and received or rejected.

(f) **Reproduction of Statutes, Rules, Regulations, etc.** If determination of the issues presented requires the study of statutes, rules, regulations, etc., or relevant parts thereof, they may be reproduced in the brief or in an addendum at the end, or they may be supplied to the court in pamphlet form. No such reproduction is required, unless ordered by the Supreme Court.

(g) **Length of Briefs.** Except by permission of the court briefs shall not exceed 50 pages of standard typographic printing or 70 pages of printing by any other process of duplicating or copying, exclusive of pages containing the table of contents, tables of citations and any addendum containing statutes, rules, regulations, etc.

Amicus curiae brief.

95-2417. **Brief of an Amicus Curiae.** A brief of an amicus curiae may be filed only if accompanied by written consent of all parties, or by leave of court granted on motion. A motion for leave shall identify the interest of the applicant and shall state the reasons why a brief of an amicus curiae is desirable. A motion of an amicus

curiae for leave to participate in the oral argument will be granted only for extraordinary reasons.

Appendix.

95-2418. **The Appendix to the Briefs.**

(a) **Use of an Appendix.** At any time before final decision, the Supreme Court may order an appendix to any brief. Also, either the appellant or respondent may, if he deems it desirable, prepare, file and serve with his brief an appendix.

(b) **Contents of the Appendix.** Unless otherwise ordered by the Supreme Court, an appendix shall contain:

(1) the relevant docket entries in the proceeding below;

(2) any relevant pleading and relevant portions of the charge, finding and opinion;

(3) the judgment, order or decision in question; and

(4) such other parts of the record as any party deems it essential for the judges of the court to read in order to decide the issues presented. In designating parts of the record for inclusion in the appendix, the parties shall have regard for the fact that the entire record is always available to the court for reference or examination and shall not engage in unnecessary designation.

(c) **Arrangement of the Appendix.** At the beginning of the appendix there shall appear a chronological list of the parts of the record which it contains. Each part of the record shall be listed by the descriptive title given to that part by the reference made to it in the briefs. The page or pages of the appendix at which each part of the record thus listed appears shall be set out opposite each listing in a column at the right, so as to permit immediate location in the appendix of the parts of the record referred to in the briefs and contained in the appendix.

The relevant docket entries in the proceeding below shall follow the list of contents. Thereafter, the parts of the record shall be set out in chronological order. The original paging of each part of the record set out in the appendix shall be indicated by placing in brackets the number of the original page at the place where the page begins. Omissions in the text of papers or of testimony

must be indicated by asterisks. A question and its answer may be contained in a single paragraph.

(d) **Reproduction of Exhibits.** Exhibits may be contained in a separate volume, suitably indexed.

Filing and service of briefs.

95-2419. **Filing and Service of Briefs.**

(a) **Time for Filing Briefs.** The appellant shall serve and file his brief within 30 days after the date on which the record is filed. The respondent shall serve and file his brief within 30 days after service of the brief of the appellant. The appellant may serve and file a reply brief within 14 days after service of the brief of the respondent, but, except for good cause shown, a reply brief must be served and filed at least 3 days before argument.

(b) **Number of Copies to Be Filed and Served.** Six copies of each brief shall be filed with the clerk of the Supreme Court unless otherwise ordered by the Court, and one copy of each brief shall be served on counsel for each party separately represented. The clerk will not accept a brief for filing unless it is accompanied by acknowldegement or proof of service as required by Section 95-2413.

(c) **Consequences of Failure to File Briefs.** If an appellant fails to file his brief within the time provided by this rule, or within the time extended, a respondent may move for dismissal of the appeal. If a respondent fails to file his brief, he will not be heard at oral argument except by permission of the court.

Form of briefs, the appendix, motions and other papers.

95-2420. **Form of Briefs, the Appendix, Motions and Other Papers.**

(a) **Form of Briefs, Appendices and Separate Volumes of Exhibits.** Briefs, appendices and separate volumes of exhibits may be produced by standard typographic printing or by any duplicating or copying process capable of producing a clear black image on white paper. Typewritten copies of briefs, appendices and separate volumes of exhibits may not be submitted without permission of the Chief Justice of the Supreme Court, except in behalf of parties allowed to proceed in *forma pauperis*. Pica solid is the smallest letter and the most compact form of composition allowed for all printed matter. Briefs, appendices and separate volumes of exhibits shall be on white uncalendered book paper in book

or booklet form. If produced by the standard typographic printing process, the pages shall be ten inches long and seven inches wide, with a margin on the outer edge not less than one inch wide and on the inner edge not less than two inches wide. If produced by a duplicating or copying process, the pages shall be eleven inches long and eight and one-half inches wide, with a margin on the outer edge not less than one inch wide and on the inner edge not less than two inches wide. The pages shall be fastened at the side and numbered at the top.

(b) **Typewritten Papers and Motions.** Papers not required to be produced in a manner prescribed by subdivision (a) of this Rule shall be plainly and legibly written by a typewriter with a new black ribbon and new black carbon paper of good grade, in double spacing, except that quotations may be single spaced, on one side only of white typewriter paper, eight and one-half inches wide and thirteen inches long, numbered at the bottom, with a ruled margin of one and one-half inches on the left-hand side of the page and one inch on the right-hand side, and numbered lines, not more than thirty-two lines to the page. The pages shall be bound at the left-hand side into volumes not containing more than two hundred fifty pages; provided, however, that if the pages number fifty or less they may be bound at the top.

In collating typewritten papers the copies shall not be mixed, but each copy shall consist throughout of uniform pages. Each page of every copy shall be opaque and each line of print thereon plainly legible. The difficulty of examining transparent, illegible and non-uniform typewritten copies has become so great that this rule will be strictly applied and papers not complying with it will not be received.

(c) **First Page and Cover.** All papers shall be bound in cardboard or pasteboard covers, unless bound at the top under subdivision (b) of this section, in which case they may be bound in cover paper. On the first page and cover of all papers must be stated the title of the supreme court, the title of the case as in the court below, adding to the words "plaintiff" and "defendant," the words "appellant" and "respondent" as the case may require, the names of counsel for appellant and respondent, the title

of the papers, as "Appellant's Brief," "Appendix to Appellant's Brief," etc., and the venue from which the appeal is taken.

95-2421. **Oral Argument.** Oral argument.

(a) **Notice of Hearing; Postponement.** The clerk shall advise all parties of the time and place at which oral argument will be heard. A request for postponement of the hearing must be made by motion filed reasonably in advance of the date fixed for hearing.

(b) **Time Allowed for Argument.** Upon oral argument of an appeal or original proceeding, 40 minutes will be allowed appellant or applicant and 30 minutes to respondent. If counsel is of the opinion that additional time is necessary for the adequate presentation of his argument, he may request such additional time as he deems necessary by motion filed reasonably in advance of the date fixed for hearing. A party is not obliged to use all of the time allowed, and the court may terminate the argument whenever in its judgment further argument is unnecessary.

(c) **Order and Content of Argument.** The appellant or applicant is entitled to open and conclude the argument. The opening argument shall include a fair statement of the case, and the closing argument shall be limited to rebuttal of respondent's argument. Counsel will not be permitted to read at length from briefs, records or authorities.

(e) **Non-Appearance of Counsel; Failure to File Briefs.** If counsel for a party fails to appear to present argument, the court may hear argument on behalf of a party whose counsel is present, and the case will be decided on the briefs and the argument heard. If no counsel appear for any party, the case will be decided on the briefs unless the court shall otherwise order.

(f) **Submission on Briefs.** By agreement of the parties, a case may be submitted for decision on the briefs, but the court may direct that the case be argued.

(g) **Use of Physical Exhibits at Hearing; Removal.** If physical exhibits other than documents are to be used at the hearing, counsel shall arrange to have them placed in the court room before the court convenes on the date of the hearing. After the hearing counsel shall cause the

exhibits to be removed from the court room unless the court otherwise directs. If exhibits are not reclaimed by counsel within a reasonable time after notice is given by the clerk, they shall be destroyed or otherwise disposed of as the clerk shall think best.

Entry and notice of orders and judgments.

95-2422. **Entry and Notice of Orders and Judgments.** The notation of a judgment or order in the docket constitutes entry thereof. Upon entry of a judgment or order, the clerk shall promptly mail to all parties a copy of the judgment or order, and notice of the date of entry thereof.

Petitions for rehearing.

95-2423. **Petitions for Rehearing.** A petition for rehearing may be filed within 10 days after the decision of the Supreme Court has been rendered, unless the time is shortened or enlarged by order, and the adverse party shall have 7 days thereafter in which to serve and file his objections thereto. Extensions of time will be granted only upon showing of unusual merit and in no event in excess of 10 days. A petition for rehearing may be presented upon the following grounds and none others: That some facts, material to the decision, or some question decisive of the case submitted by counsel, was overlooked by the court, or that the decision is in conflict with an express statute or controlling decision to which the attention of the court was not directed. Oral argument in support of the petition will not be permitted. No reply to a petition for rehearing will be received unless requested by the court, but a petition for rehearing will ordinarily not be granted in the absence of such a request. Six copies of the petition, produced in accordance with section 95-2420(a), shall be filed with the clerk.

Calendar; withdrawal of records.

95-2424. **Calendar: Withdrawal of Records.**

(a) **Placing Causes Upon Calendar.** Thirty days after the appellant's brief has been filed, the cause shall be placed on the calendar as ready for oral argument.

(b) **Setting Causes for Argument.** Causes against defendants held in custody will be set for argument by the court in advance of causes against defendants on bail unless for good cause the court shall otherwise order.

(c) **Permission to Take Record from Clerk's Office.** The records and other papers of the Supreme Court shall

not be taken therefrom except by counsel pursuant to a written order of a justice of the court, which order shall specify the time the same may be retained out of the clerk's office; provided, that the court or a justice thereof may require the same to be returned within a shorter period upon notice. The clerk shall preserve each order and counsel's receipt until the papers therein mentioned shall be returned.

Substantial and insubstantial errors on appeal.

95-2425. **Substantial and Insubstantial Errors on Appeal.** Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded. Defects affecting jurisdictional or constitutional rights may be noticed although they were not brought to the attention of the trial court.

Determination of appeal.

95-2426. **Determination of Appeal.** On appeal the reviewing court may:

(1) Reverse, affirm or modify the judgment or order from which the appeal is taken;

(2) Set aside, affirm or modify any or all of the proceedings subsequent to or dependent upon the judgment or order from which the appeal is taken;

(3) Reduce the degree of the offense of which the appellant was convicted;

(4) Reduce the punishment imposed by the trial court; or

(5) Order a new trial if justice so requires.

Issuance of mandate, return of record and termination of jurisdiction.

95-2427. **Issuance of Mandate, Return of Record and Termination of Jurisdiction.** Upon termination of the appeal the Supreme Court shall remand the cause with proper instruction, together with the opinion of the court; and the clerk shall return all original documents to the trial court.

After the cause has been remanded to the trial court, the appellant court has no further jurisdiction of the appeal or the proceedings thereon, and all orders necessary to carry the judgment into effect must be made by the court to which the cause is remanded.

Indigent appeals.

95-2428. **Indigent Appeals.**

(a) Upon imposition of any sentence in a criminal case a defendant may file in the trial court a petition re-

questing that he be furnished with a transcript of the proceeding at his trial. The petition shall be verified by the petitioner and shall state facts showing that he is at the time of filing the petition without financial means to pay for the transcript. If the trial judge who imposed sentence or in his absence any judge of the court finds that the defendant is without financial means with which to obtain the transcript of the proceedings at his trial he shall order the official court reporter to transcribe an original and copy of his notes of the proceedings at the trial. The original of the report of proceedings shall be filed with the clerk of the trial court and the copy shall be delivered to the defendant without charge.

(b) **Application to the Supreme Court.** If the petition provided for in subsection (a) is denied by the trial court, a petition so to proceed may be filed in the Supreme Court within 30 days after entry of the denial. The petition shall be accompanied by a copy of the verification filed in the trial court and of the statement of reasons for denial given by the trial court.

Appeal by one defendant.

95-2429. **Appeal by One Defendant.** When several defendants are tried jointly, any one or more of them may take an appeal; but those who do not join in the appeal shall not be affected thereby.

Defendant discharged on reversal of judgment.

95-2430. **Defendant Discharged on Reversal of Judgment.** If a judgment against the defendant is reversed without ordering a new trial, the appellate court must, if he is in custody, direct him to be discharged therefrom; or if on bail, that his bail be exonerated; or if money was deposited instead of bail, that it be refunded to the defendant.

CHAPTER 25

APPELLATE REVIEW OF LEGAL SENTENCES

Appellate review of legal sentences.

Review division of supreme court.

95-2501. **Review Division of the Supreme Court for Review of Certain Sentences.** The Chief Justice of the Supreme Court of Montana shall appoint three district court judges to act as a review division of the Supreme Court and shall designate one of such judges to act as chairman thereof. The clerk of the Montana Supreme Court shall record such appointment and shall give notice thereof to the clerk of every district court. This review division shall meet at least four times a year or more as

its business requires as determined by the chairman. The decision of any two of such judges shall be sufficient to determine any matter before the review division. No judge shall sit or act on a review of sentence imposed by him. In any case in which review of a sentence imposed by any of the judges serving on the review division is to be acted on by said division, the Chief Justice of the Supreme Court of Montana may designate another judge to act in place of such judge. The review division shall hold its meetings at Deer Lodge, and may adopt any rules and regulations which will expedite their review of sentences. The division is also authorized to appoint a secretary and such clerical help as it deems adequate and fix their compensation.

Procedure for review.

95-2502. **Procedure for Review.** Any person sentenced to a term of one year or more in the state prison by any court of competent jurisdiction may, within sixty (60) days from the date such sentence was imposed, except in any case in which a different sentence could not have been imposed, file with the clerk of the district court in the county in which judgment was rendered, an application for review of the sentence by the review division. Upon imposition of the sentence the clerk shall give written notice to the person sentenced of his right to make such a request. Such notice shall include a statement that review of the sentence may result in decrease or increase of the sentence within limits fixed by law. The clerk shall transmit such application to the review division and shall notify the judge who imposed the sentence, and the county attorney of the county in which the sentence was imposed. Such judge may transmit to the review division a statement of his reasons for imposing the sentence, and shall transmit such a statement within seven days, if requested to do so by the review division. The review division may for cause shown consider any late request for review of sentence and may grant such request. The filing of an application for review shall not stay the execution of the sentence.

Review—decision.

95-2503. **Review. Decision.** The review division shall, in each case in which an application for review is filed in accordance with section 95-2502, review the judgment so far as it relates to the sentence imposed, either increasing or decreasing the penalty, and any other sentence imposed on the person at the same time, and may order such

different sentence or sentences to be imposed as could have been imposed at the time of the imposition of the sentence under review, or may decide that the sentence under review should stand. In reviewing any judgment, said division may require the production of pre-sentence reports and any other records, documents or exhibits relevant to such review proceedings. The appellant may appear and be represented by counsel, and the state may be represented by the county attorney of the county in which the sentence was imposed. If the review division orders a different sentence, the court sitting in any convenient county shall resentence the defendant as ordered by the review division. Time served on the sentence reviewed shall be deemed to have been served on the sentence substituted. The decision of the review division in each case shall be final and the reasons for such decision shall be stated therein. The original of each decision shall be sent to the clerk of the court for the county in which the judgment was rendered and a copy shall be sent to the judge who imposed the sentence reviewed, the person sentenced, the principal officer of the institution in which he is confined and the decision shall be reported in the Montana Reports.

Scope of act.

95-2504. **Scope of Act.** A person who on the effective date of this act is imprisoned under a sentence to the state prison and who is not eligible for parole may, notwithstanding the partial execution of such sentence, file for a review of such sentence and of any other sentence imposed at that time; provided, that at the time of such request for review such person shall execute a written consent to such sentence as may be imposed by the review division on such review, including an increased term. No such application shall be considered if taken later than two years after the effective date of this act nor in any case in which a different sentence could not have been imposed.

Post-conviction hearing.

CHAPTER 26

POST-CONVICTION HEARING

Petition in the trial court.

95-2601. **Petition in the Trial Court.** Any person adjudged guilty of an offense in a court of record who has no adequate remedy of appeal and who claims sentence was imposed in violation of the constitution or the laws of this state or the Constitution of the United States, or

that the court was without jurisdiction to impose such sentence, or that sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, upon any ground of alleged error available under writ of habeas corpus, writ of coram nobis, or other common law or statutory remedy may move the court which imposed the sentence or the Supreme Court or any justice of the Supreme Court to vacate, set aside, or correct the sentence.

Proceedings commenced by petition.

95-2602. **Proceedings Commenced by Petition.** The proceeding shall be commenced by filing with the clerk of the court in which the conviction took place or the clerk of the Supreme Court a verified petition. The clerk shall docket the petition upon his receipt and bring the same promptly to the attention of the court.

Contents of the petition.

95-2603 **Contents of the Petition.** The petition shall identify the proceedings in which the petitioner was convicted, give date of the rendition of the final judgment complained of, and clearly set forth the alleged violation or violations. The petition shall have attached thereto affidavits, records or other evidence supporting its allegations or shall state why the same are not attached. They shall identify any previous proceedings that the petitioner may have taken to secure relief from his conviction. Arguments and citations and discussion of authorities shall be omitted from this petition.

When motions may be made.

95-2604. **When Motion May Be Made.** A motion for such relief may be made at any time after conviction.

Proceedings on the petition.

95-2605. **Proceedings on the Petition.** Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the county attorney in the county in which the conviction took place, grant a prompt hearing thereon, determine the issue and make findings of fact and conclusions with respect thereto.

The court may receive proof by affidavits, depositions, oral testimony or other evidence. In its discretion the court may order the petitioner brought before the court for the hearing. If the court finds in favor of the petitioner, it shall enter an appropriate order with respect to the judgment or sentence in the former proceedings and such supplementary orders as to reassignment, re-

trial, custody, bail or discharge as may be necessary and proper. If the court finds for the state the petitioner shall be returned to the custody of the person to whom the writ was directed.

Record must be kept.

95-2606. **Record Must Be Kept.** A court which entertains a motion pursuant to this chapter must keep a record of the proceedings and enter its findings and conclusions.

Successive petitions not allowed.

95-2607. **Successive Petitions Not Allowed.** All grounds for relief claimed by a petitioner under this act must be raised in his original or amended petition, and any grounds, other than constitutional grounds not so raised are waived unless the court on hearing a subsequent petition finds grounds for relief asserted therein which could not reasonably have been raised in the original or amended petition.

Review.

95-2608. **Review.** Either the petitioner or the state may appeal to the Supreme Court of Montana from an order entered on the motion. The appeal shall be taken within six months from the entry of the order.

Habeas corpus.

CHAPTER 27

HABEAS CORPUS

Who may prosecute writ.

95-2701. **Who May Prosecute Writ.** Every person imprisoned or otherwise restrained of his liberty, within this state, may prosecute a writ of habeas corpus to inquire into the cause of such imprisonment or restraint, and if illegal to be delivered therefrom.

Writ for purpose of bail.

95-2702. **Writ for Purpose of Bail.** When a person is imprisoned or detained in custody on any criminal charge, for want of bail, such person is entitled to a writ of habeas corpus for the purpose of giving bail, upon averring that fact in his petition, without alleging that he is illegally confined.

Application for, how made.

95-2703. **Application for, how made.** Application for the writ is made by petition, signed either by the party for whose relief it is intended, or by some person in his behalf, and must specify:

(a) That the person in whose behalf the writ is applied for is unlawfully imprisoned or restrained of his liberty, why the imprisonment or restraint is unlawful,

the officer or person by whom he is so confined or restrained, and the place where, naming all the parties if they are known, or describing them if they are not known.

(b) The petition must be verified by the oath or affirmation of the party making the application.

By whom issued and before whom returnable.

95-2704. **By whom issued and before whom returnable.** The writ of habeas corpus may be granted:

(a) By the supreme court, or any justice thereof, upon petition by or on behalf of any person restrained of his liberty in this state. When so issued it may be made returnable before the court, or any justice thereof, or before any district court or judge thereof.

(b) By the district courts or a judge thereof, upon petition by or on behalf of any person restrained of his liberty in their respective counties or districts.

Writ granted without delay.

95-2705. **Writ granted without delay.** Any court or judge authorized to grant the writ, to whom a petition therefor is presented, must if it appears that the writ ought to issue, grant the same without delay.

Refusal to obey writ.

95-2706. **Refusal to obey writ.** If the person commanded by the writ refuses to obey he shall be adjudged in contempt of court.

Content of writ.

95-2707. **Content of writ.**

(a) The writ must be directed to the person having custody of or restraining the person on whose behalf the application is made, and must command him to have the body of such person before the court, or judge, before whom the writ is returnable, at a time and place therein specified.

(b) The issue or issues to be determined upon return of the writ may be stated, either in the writ or in an order attached to the writ. If the issue or issues to be determined upon return of the writ are not stated therein, or in an order attached thereto then a copy of the petition must be attached to the writ.

Service of the writ.

95-2708. **Service of the writ.**

(a) The writ must be served upon the person to whom it is directed. If the person to whom the writ is directed represents a state institution, a copy of the writ shall be

served upon the attorney general. If such person represents a county institution, a copy of the writ shall be served upon the county attorney.

(b) The writ shall be served by the clerk of court, the sheriff or any other officer directed to do so by the court.

(c) The writ shall be served in the same manner as a summons in civil actions, except when otherwise expressly directed by the court or judge.

Return, what to contain.

95-2709. **Return, what to contain.** The person upon whom the writ is served must make a return and state in his return:

(a) Whether he has the party in his custody or under his power or restraint.

(b) If he has the party in his custody or under his power or restraint, he shall state the authority for and cause of such custody or restraint. If the detention is by legal process a copy thereof must be annexed to the response.

(c) If he had the party in his custody or under his power or restraint at any time prior or subsequent to the date of the writ, but has transferred such custody or restraint to another, the return must state particularly to whom, at what time and place, for what cause and by what authority such transfer took place.

(d) The return must be signed by the person making the same, and, except when such person is a sworn public officer, and makes such return in his official capacity, is must be verified by his oath.

Production of person, exception for infirmity or illness.

95-2710. **Production of person, exception for infirmity or illness.** The person commanded by the writ shall bring the detained person according to the command of the writ unless it is made to appear by affidavit that because of sickness or infirmity such person cannot be brought before the judge without danger to his health. If the judge is satisfied with the truth of the affidavit he may proceed and dispose of the case as if the party had been produced, or the hearing may be postponed until the party can be present.

Hearing on return.

95-2711. **Hearing on return.**

(a) The court or judge before whom the writ is returned must, immediately after the return, proceed to hear and examine the return.

(b) The hearing on the writ may be summary in nature.

Production of evidence, depositions.

95-2712. **Production of evidence; depositions.** Evidence may be produced and compelled as in civil actions. Depositions taken in accordance with the rules of civil procedure may be read as evidence at the hearing on the writ.

Deposition of petitioner.

95-2713. **Disposition of petitioner.** If the court finds in favor of the petitioner, it shall enter an appropriate order with respect to the judgment or sentence in the former proceeding and such supplementary orders as to reassignment, retrial, custody, bail or discharge as may be necessary and proper. If the court finds for the state the petitioner shall be returned to the custody of the person to whom the writ was directed.

Appeal on order of judgment on habeas corpus.

95-2714. **Appeal on order of judgment on habeas corpus.** An appeal may be taken to the supreme court by the state from an order of judgment discharging the petitioner. The court may admit the petitioner to bail pending appeal. The appeal shall be taken in the same manner as in civil actions.

Writ and process —issuance.

95-2715. **Writ and process may issue at any time.** Any writ or process authorized by this chapter may be issued and served on any day or at any time.

No release for technical defects.

95-2716. **No release for technical defects.** A person may not be released on a writ of habeas corpus due to any technical defect in commitment not affecting his substantial rights.

Repealing clause.

Section 2. Sections 94-4716, 94-4716.1, 94-4717, 94-4803, 94-4805, 94-4901, 94-4902, 94-4903, 94-4904, 94-4905, 94-4906, 94-4907, 94-4908, 94-4909, 94-4910, 94-4911, 94-4912, 94-4913, 94-4914, 94-4915, 94-4916, 94-4917, 94-5601, 94-5602, 94-5603, 94-5604, 94-5605, 94-5606, 94-5607, 94-5608, 94-5609, 94-5610, 94-5611, 94-5612, 94-5613, 94-5614, 94-5615, 94-5616, 94-5617, 94-5618, 94-5619, 94-5801, 94-5802, 94-5803, 94-5804, 94-5805, 94-5901, 94-5902, 94-5903, 94-5904, 94-5905, 94-5906, 94-5907, 94-5908, 94-5909, 94-5910, 94-5911, 94-5912, 94-5913, 94-5914, 94-5915, 94-5916, 94-5917, 94-5918, 94-6001, 94-6002, 94-6003, 94-6004, 94-6005, 94-6006, 94-6007, 94-6008, 94-6009, 94-6010, 94-6011, 94-6012, 94-6013, 94-6014, 94-6015, 94-6016, 94-6017, 94-6018, 94-6019, 94-6020, 94-6021, 94-6022, 94-6023, 94-6024, 94-

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1947 and all acts and parts of acts in conflict herewith are hereby repealed.

Effective date.

Section 3. The Montana Code of Criminal Procedure is effective January 1, 1968, and its provisions apply to all proceedings in prosecutions for crimes alleged to have been committed on or after that date.

Severability clause.

Section 4. It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved: February 28, 1967.

CHAPTER 197

An act for the codification and general revision of the laws relating to the state board of health; amending Sections 27-112 and 27-202, R.C.M. 1947, and repealing Sections 69-101 through 69-103, 69-105, 69-105.1, 69-105.2, 69-105.3, 69-105.4, 69-107, 69-109 through 69-127, 69-201 through 69-208, 69-301, 69-303 through 69-319, 69-401 through 69-404, 69-501 through 69-536, 69-536.1, 69-536.2, 69-537 through 69-539, 69-601 through 69-609, 69-701 through 69-712, 69-801 through 69-817, 69-901, 69-902, 69-1001 through 69-1025, 69-1122 through 69-1138, 69-1201 through 69-1220, 69-1301 through 69-1320, 69-1326 through 69-1346, 69-2001 through 69-2004, 69-2201, 69-2202, 69-2301 through 69-2310, 69-2407 through 69-2421, 69-2501 through 69-2504, 69-2601 through 69-2603, 69-2901 through 69-2918, 69-3001 through 69-3004, 69-3007 through 69-3016, 69-3016.1, 69-3017, 69-3018, 69-3101 through 69-3112, 69-3201 through 69-3210, 69-3801 through 69-3813, R.C.M. 1947.

Intent of legislative assembly.

It is the intent of the legislative assembly that all nonamendatory sections of this bill be codified in Title 69, Revised Codes of Montana, 1947, with the subject matter under each heading assigned to a separate chapter of that title.

Be it enacted by the Legislative Assembly of the State of Montana:

State Board of Health

State board of health.

Section 1. There is a state department of health within the executive branch of state government.

Section 2. As used in this act, unless the context clearly indicates otherwise;

(1) "State board" means the state board of health; "State Board."

(2) "Department" means the state department of health; "Department."

(3) "Executive officer" means the director of the state department of health; "Executive officer."

(4) "Communicable disease" means a disease designated communicable by the state board. "Communicable disease."

Section 3. (1) The state board consists of seven (7) members appointed by the governor for terms of seven (7) years with the consent of the senate. An appointment to replace a member whose term has expired shall be for seven (7) years. An appointment to replace a member whose term has not expired shall be for the remainder of the term. Board members —terms.

(2) Membership of the state board shall include: Members to include.

(a) three (3) persons who have the degree of doctor of medicine;

(b) one (1) person who has the degree of doctor of dental surgery;

(c) three (3) persons who have demonstrated intelligent and active interest in the field of public health who do not hold the degree of doctor of medicine or doctor of dental surgery.

(3) Terms of members holding office when this act becomes effective shall not be affected.

Section 4. (1) The state board shall elect a chairman and other necessary officers and may adopt by-laws governing meetings. The executive officer shall serve as secretary to the state board. Four (4) members constitute a quorum for the transaction of business. Officers.

(2) The state board shall meet once every two (2) months and may hold additional meetings on the call of Meetings.